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Truth and Consequences: Mitt Romney, Proposition 8, and Public Reason

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ESSAY

TRUTH AND CONSEQUENCES: MITT ROMNEY, PROPOSITION 8, AND PUBLIC REASON

*Frederick Mark Gedicks**

ABSTRACT

Although formal religious tests for federal office are constitutionally prohibited, they have long been facts of political life in presidential elections. John Kennedy remains the only non-Protestant ever elected President, and no major party has ever nominated a non-Christian.

Against this electoral history, it was predictable that mainstream Christian commentators would legitimate attacks on Mitt Romney's Mormonism during the Republican presidential primaries as a "false" religion. The Mormon Church itself, however, periodically intervenes in initiative and ratification campaigns to defend "true" or "divine" principles that it believes ought to be enacted into law. How unfair is it to label a religion "false" in an electoral campaign, if the religion itself regularly participates in such campaigns on the basis of truth and falsity?

This Essay examines the deployment of religious truth-claims in electoral politics through the lenses of Governor Romney's unsuccessful campaign for the Republican nomination and the LDS Church's participation in the successful Proposition 8 campaign to ban same-sex marriage in California. I argue that in contemporary electoral politics, attacks on the truth

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I presented earlier versions of this Essay during 2008 and 2009 at a conference on religion, citizenship, and multiculturalism at Harvard Law School, at a meeting of the Theory Group of the Brigham Young University Psychology Department, and at faculty colloquia at the law schools of Brigham Young University, the University of Cincinnati, the University of Denver, and DePaul University. I am grateful to Stirling Adams, Mark Bohn, Chris Bryant, Rick Garnett, Jim Gordon, Amos Guiora, Roger Hendrix, Andy Koppelman, Michael Perry, Val Ricks, Brett Scharffs, and (especially) Paul Horwitz for comments and criticisms on earlier drafts. Kevin Abbott, Tyler Lake, Audrey Lambert, and Allison Shiozawa Miles provided excellent research assistance. As always, BYU Law Research Librarian Galen Fletcher found the hard-to-find sources. All errors that remain are mine.

of a religion make little sense in light of the pluralism and postmodernism that now characterize the contemporary United States, but are a likely consequence when the religion itself introduces such truth-claims into electoral politics.

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It is not an unreasonable prejudice for people who . . . care about true religion to take their concern about Mormonism into account in considering the candidacy of Mr. Romney. . . . Would a Mormon as president of the United States give greater credibility and prestige to Mormonism? The answer is almost certainly yes. Would it therefore help advance the missionary goals of what many view as a false religion? The answer is almost certainly yes. Is it legitimate for those Americans to take these questions into account in voting for a presidential nominee or candidate? The answer is certainly yes.

— Richard John Neuhaus[†]

The Church's teachings and position on this moral issue are unequivocal. Marriage between a man and a woman is ordained of God, and the formation of families is central to the Creator's plan for His children. [] We ask that you do all you can to support the proposed constitutional amendment by donating of your means and time to assure that marriage in California is legally defined as being between a man and a woman. Our best efforts are required to preserve the sacred institution of marriage.

— First Presidency of The Church of
Jesus Christ of Latter-day Saints^{††}

It is not just religious but also cultural pluralism that upsets our current world situation and simultaneously renders it so full of promise.

— Gianni Vattimo^{†††}

[†] Richard John Neuhaus, *A Mormon in the White House* (Dec. 7, 2007), <http://www.firstthings.com/onthesquare/?p=787>.

Father Neuhaus passed away as I was finishing this Essay. Although I was not close to him personally, he generously responded to the letters and reprints that I sent his way over the years that we were professionally acquainted. His issues with Mormonism were well known, but my disagreements with him on this and other matters do not affect my feeling that with his passing the world lost an important voice for religious freedom.

^{††} Letter from Church President Thomas S. Monson & Counselors Henry B. Eyring & Dieter F. Uchtdorf (June 29, 2008), ¶¶ 2 & 4, *available at* <http://newsroom.lds.org/ldsnewsroom/eng/commentary/california-and-same-sex-marriage>.

^{†††} DOPO LA CRISTIANITÀ: PER UN CRISTIANESIMO NON RELIGIOSO 39 (Garzanti, 2002) (author's translation).

INTRODUCTION: ON BELONGING TO A FALSE RELIGION

I learned early in life that Mormons are different. I was the only Mormon in each of my elementary school classes in New Jersey and my middle-school classes in southern California, and one of perhaps twenty Mormons in my 2,800-student California high school. Growing up outside of the interior West gave me a strong sense of religious difference—particularly my religious difference.

A strong religious consciousness pervaded my elementary school. I knew the religion and denominational affiliation of every one of my classmates, and they knew mine. The day started with a devotional Bible reading and a prayer—mostly the Lord's Prayer from the New Testament, which all the Christian kids seemed to recite from memory in a way that bore faint resemblance to how I was taught to pray. We had released-time classes every Wednesday for the last hour of the school day, when everyone loaded up on the buses for church-school except the Jews, the Quakers, and me.

I moved with my family to southern California in the sixth grade. In contrast to New Jersey, where everyone belonged to a church or a synagogue and we all knew each other's religion, California was a place where lots of kids weren't religious at all, and no one brought up religion in school. But though I went from a place where belief was common and public to a place where belief was less common and private, one constant remained the difference of my Mormon faith.

So my upbringing made me less inclined to a charitable understanding of Father Neuhaus when he defended and dismissed criticism of Governor Romney's Mormonism as mere opposition to a "false" religion. Although formal religious tests for federal office are constitutionally prohibited,¹ they remain a regrettable fact of political life in presidential elections. John Kennedy remains the only non-Protestant ever elected President,² and the major political parties have only nominated three other non-Protestants for presidential office.³ The "Judeo-Christian tradition" notwithstanding,

1. U.S. CONST. art. VI, cl. 3 ("[N]o religious Test shall ever be required as a Qualification to any Office or public Trust under the United States."); *see also* *Torcaso v. Watkins*, 367 U.S. 488 (1961) (applying the norm of the Religious Test Clause to state offices and public trusts through the Establishment Clause).

2. *See* *Adherents.com*, Religious Affiliation of U.S. Presidents, http://www.adherents.com/adh_presidents.html (last visited Dec. 30, 2009).

3. Besides Kennedy, the Democratic Party has nominated two Roman Catholics, Al Smith and John Kerry in 1928 and 2004, respectively, and a Greek Orthodox Christian, Michael Dukakis in 1988. The Republican Party has never nominated a non-Protestant for President, *see* David Masci, *Religion and Politics*, 14 CQ RESEARCHER 637, 647 (July 30, 2004), although Abraham Lincoln and Dwight Eisenhower came close, *see* Abraham Lincoln, *Handbill Replying to Charges of Infidelity* (July 31, 1946) ("That I am not a member of any Christian church, is true; but I have never denied the truth of the Scriptures; and I have never spoken with intentional disrespect of religion in general, or of any deno-

no major party has ever nominated a Jew for president—let alone a Buddhist, Hindu, Mormon, Muslim, or unbeliever.⁴ Against this electoral history, it was perhaps predictable that a mainstream Christian commentator like Neuhaus would feel free to legitimate religious attacks on Romney as the reasonable reaction of people “who . . . care about true religion.”⁵

Ironically, a comparable rhetoric of religious truth and falsity is common among Mormons. A central narrative of The Church of Jesus Christ of Latter-day Saints (as the Mormon or LDS Church formally calls itself) is that it is the “only true . . . church,”⁶ and Latter-day Saints frequently witness to each other and to potential converts that the church and its doctrines, teachings, and practices are exclusively true. More to the point, the church periodically intervenes in state initiative and ratification campaigns

mination of Christians in particular.”), in *THE COLLECTED WORKS OF ABRAHAM LINCOLN* 382, 382 (Roly P. Basler ed., Rutgers University Press 1953); Adherents.com, *The Religious Affiliation of U.S. President Dwight D. Eisenhower*, http://www.adherents.com/people/pe/Dwight_Eisenhower.html (last visited Dec. 30, 2009) (reporting that Eisenhower was raised by Jehovah’s Witness parents, though he was born a Mennonite and was baptized a Presbyterian shortly after taking office).

4. Sen. Joseph Lieberman (D-Conn.), an observant Jew, was nominated for vice president on the Democratic ticket with Al Gore in the 2000 election.

5. Richard John Neuhaus, *A Mormon in the White House* (Dec. 7, 2007), <http://www.firstthings.com/onthesquare/?p=787>; see also Richard John Neuhaus, *Mitt Romney on Faith in America* (Dec. 7, 2007), <http://www.firstthings.com/onthesquare/?p=918> [hereinafter Neuhaus, *Mitt Romney*].

I was earlier taken to task for writing that someone who declines to vote for Mr. Romney because he is a Mormon is not necessarily guilty of the civic sin of intolerance. I then explained that, in making that argument, I was not agreeing with those who oppose him because he is a Mormon. Rather, I would simply note the undeniable fact that a substantial number of Americans, mainly evangelical Christians, believe that the Church of Jesus Christ of Latter-day Saints is a false religion, and that a Mormon in the White House would give a substantial boost to that religion, with the consequence of imperiling the salvation of souls. We may not agree with that view, but to deride it as bigotry is itself a form of bigotry.

Id.

Neuhaus’s comments were only some of many pointed criticisms of the candidates’ religions and religious beliefs during the 2008 primary and general elections. See, e.g., Michael Gerson, *Faith-Based Condescension*, WASH. POST, Sept. 12, 2008, at A15 (describing attacks on Sarah Palin’s religious beliefs, including reporter inquiries about whether Palin had “spoken in tongues”); David D. Kirkpatrick, *The Evangelical Crackup*, NY TIMES MAG., Oct. 28, 2007, at 38, 66 (reporting James Dobson’s 2006 suggestion that “evangelicals would have a hard time voting for Mitt Romney because he is a Mormon”); Waveney Ann Moore, *TV Preacher under IRS Scrutiny*, ST. PETERSBURG TIMES, June 25, 2008, at 3B (reporting IRS investigation of tax-exempt status of televangelist Bill Keller’s organization based on sermons arguing that “a vote for Romney is a vote for Satan,” and that then-Sen. Obama is not a genuine Christian); Larry Rohter, *Evangelical Leader Attacks Obama on Religious Views*, N.Y. TIMES, June 25, 2008, at A16, available at <http://nytimes.com/2008/06/25/us/politics/25dobson.html> (reporting James Dobson’s accusation that then-Sen. Obama was “deliberately distorting the traditional understanding of the Bible to fit his own world view, his own confused theology”).

6. See, e.g., *THE DOCTRINE AND COVENANTS OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS* 1:30 (1921) (1971 prt.) (declaring that the LDS Church is the “only true and living church upon the face of the whole earth”); see also 1 JOSEPH SMITH & B. H. ROBERTS, *HISTORY OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS: HISTORY OF JOSEPH SMITH THE PROPHET* 6 (1902) (relating vision in which Joseph was told that the Christian churches of his day were “wrong” and “corrupt”).

to defend “true” or “divine” principles that it believes ought to be enacted into law and reflected in public policy. The church’s mobilization against ratification of the Equal Rights Amendment in the 1970s and legalization of same-sex marriage since the early 1990s are notable examples. How upset are folks entitled to get when their religious beliefs are labeled as “false” in electoral campaigns, if they themselves intervene in such campaigns on the basis of religious truth and falsity?

This Essay examines the deployment of religious truth-claims in electoral politics, through the lenses of Governor Romney’s unsuccessful campaign for the Republican presidential nomination and the LDS Church’s participation in the successful initiative campaign to ban same-sex marriage in California. What does it mean to attack an electoral candidate’s religious beliefs as “false,” or to defend a restrictive legal practice as “true?” What do “true” and “false” even mean in contemporary political life? Does a religion’s intervention in electoral politics on the basis of truth or falsity justify attacks on the truth or falsity of that religion?⁷

I will argue that in contemporary electoral politics, attacks on the truth of a religion make little sense in light of the religious pluralism and post-modern sensibilities that characterize the contemporary United States. Such attacks function less as claims about reality than as veiled accusations that the candidate is unacceptably “other.” On the other hand, such attacks are a foreseeable and perhaps even a justifiable consequence when the candidate’s religion regularly participates in electoral politics on the basis of truth and falsity.

I begin with the failure of Enlightenment to eclipse belief over the last several centuries,⁸ and the paradoxical dissolution of traditional modes of belief despite that failure.⁹ Postmodern pluralism has precluded belief from reassuming the pre-Enlightenment dominance that Christianity once enjoyed, and is encouraging a different understanding of truth as a dynamic function of dialogue and interpretation by believers in the world, rather than a static relation between what believers think and how the world “really” is.¹⁰ The multiplicity, indeterminacy, construction, and ubiquity of contemporary religious truth-claims now prevent any religion from plausibly asserting in public contexts that its claims are true to the exclusion of all others.¹¹ In a religiously plural culture like the contemporary United

7. As a definition of “truth,” I generally assume throughout this Essay a naive correspondence theory which holds that a proposition or belief is “true” if it corresponds to some physical or metaphysical reality. See, e.g., *The Correspondence Theory of Truth*, STAN. ENCYCL. PHIL. § 1 July 25, 2005, available at <http://plato.stanford.edu/entries/truth-correspondence>. Although this theory of truth is the least likely to be credited by contemporary philosophers, it is undoubtedly still what most Americans understand as “truth.”

8. See *infra* Part II.A.

9. See *infra* Part II.B.

10. See *infra* Part III.

11. See *infra* Parts III.A.–E.

States, the introduction of religious truth-claims into electoral campaigns presents distinct disadvantages and dangers to liberal democracy,¹² particularly when done from the right.¹³ I defend an ethic of public reason for participation in electoral politics,¹⁴ using as examples the attacks on Romney's Mormonism during his unsuccessful bid for the 2008 Republican presidential nomination,¹⁵ and the participation of the LDS Church in the successful initiative campaign to constitutionally prohibit same-sex marriages in California.¹⁶ I close with some observations about the priority of pluralism to truth in electoral politics.¹⁷

I. THE PARADOX OF CONTEMPORARY BELIEF

For many years, sociologists and other western academics argued that the advance of secular knowledge would trigger the decline and eventual demise of religious belief.¹⁸ It is old news that this "secularization hypothesis" proved false in the United States,¹⁹ where belief remains widespread and influential.²⁰ Although the number of unbelievers in the United States has steadily increased to about 10% of the population,²¹ an overwhelming majority of Americans still describe themselves as believers.²²

12. See *infra* Part IV.A.

13. See *infra* Part IV.B.

14. See *infra* Part V.

15. See *infra* Part V.A.

16. See *infra* Part V.B.

17. See *infra* Part VI.

18. William H. Swatos Jr. & Kevin J. Christiano, *Secularization Theory: The Course of a Concept*, 60 SOC. OF RELIGION 209, 214 (1999); R. Stephen Warner, *Work in Progress Toward a New Paradigm for the Sociological Study of Religion in the United States*, 98 AM. J. SOC. 1044, 1047-48 (1993).

19. See, e.g., Peter L. Berger, *Secularization Falsified*, FIRST THINGS, Feb. 2008, at 23-24, available at <http://firstthings.com/article/2008/01/002-secularization-falsified-1> [hereinafter Berger, *Secularization*].

20. See, e.g., Peter L. Berger, *Reflections on the Sociology of Religion Today*, 62 SOC. OF RELIGION 443, 445 (2001) [hereinafter Berger, *Sociology of Religion*]; Rebecca French, *Shopping for Religion: The Change in Everyday Religious Practice and Its Importance to the Law*, 51 BUFF. L. REV. 127, 160-61, 192 (2003); David N. Gellner, *Studying Secularism, Practising Secularism: Anthropological Imperatives, Personal Values, and Professional Evaluations*, 9 SOC. ANTHROPOLOGY 337, 337 (2001); Mark C. Modak-Truran, *Beyond Theocracy and Secularism (Part I): Toward a New Paradigm for Law and Religion*, 27 MISS. C. L. REV. 159, 160-61 (2007); Warner, *supra* note 18, at 1048.

21. THE PEW FORUM ON RELIGION & PUBLIC LIFE, U.S. RELIGIOUS LANDSCAPE SURVEY 5, 20, 37 (2008) [hereinafter PEW SURVEY] (survey data showing that atheists, agnostics, and the "secular unaffiliated" totaled 10% in 2007); see Frederick Mark Gedicks & Roger Hendrix, *Uncivil Religion: Judeo-Christianity and the Ten Commandments*, 110 W. VA. L. REV. 275, 285 & n.60 (2007) [hereinafter Gedicks & Hendrix, *Uncivil Religion*] (summarizing and analyzing survey data showing that unbelievers constitute between 10% and 15% of the population).

22. The major recent in-depth surveys of American belief are BAYLOR INST. FOR STUDIES OF RELIGION, AMERICAN PIETY IN THE 21ST CENTURY (2006) [hereinafter BAYLOR SURVEY]; BARRY A. KOSMIN ET AL. GRADUATE CTR. OF THE CITY UNIV. OF N.Y., AMERICAN RELIGIOUS IDENTIFICATION SURVEY (2001) [hereinafter CUNY SURVEY]; PEW SURVEY, *supra* note 21. Roger Hendrix and I exhaustively reviewed the CUNY and Baylor surveys along with other statistical data on American belief preferences in Gedicks & Hendrix, *Uncivil Religion*, *supra* note 21, at 284-88.

The endurance of belief in the United States has forged an ironic agreement among the secular left and the religious right that religion is again on the rise. The collapse of secularization brought forth a succession of comically dire polemics by secular intellectuals against the persistence of belief,²³ while cultural conservatives have trumpeted this same persistence with barely disguised glee.²⁴

The reality of American belief differs considerably from both the despair of the left and the hubris of the right. The secularization hypothesis was pushing against a certain kind of religious metaphysical thinking—the traditional Christian supposition that religion represents to its followers an objectively true cosmic reality. One might call this the “metaphysics of transcendence,” a phrase that captures the traditional self-understanding of denominational Christianity that its task is to provide its members with access to the means of salvation provided by the singular God and truth and reality that exist beyond temporal life.²⁵

The triumph of transcendence does not necessarily follow from the failure of secularization, however. In fact, the demise of secularism has not been accompanied by a return to dominance of traditional denominational belief. To the contrary, when the secularization hypothesis began predicting religion’s impending demise, traditional belief was already losing its hold on North America and western Europe. Although the secularization hypothesis turned out to be wrong, the erosion of denominational belief has not halted.²⁶

For example, self-reported rates of church attendance are in decline,²⁷ and have been overstated for decades.²⁸ Among all American believers,

23. See, e.g., RICHARD DAWKINS, *THE GOD DELUSION* (Houghton Mifflin 2006); SAM HARRIS, *THE END OF FAITH* (2004); CHRISTOPHER HITCHENS, *GOD IS NOT GREAT* (Emblem 2008); KEVIN PHILLIPS, *AMERICAN THEOCRACY* (Viking 2006).

24. See, e.g., DINESH D’SOUZA, *WHAT’S SO GREAT ABOUT CHRISTIANITY* (2007); DAN GILGOFF, *THE JESUS MACHINE* (2007); JOHN MICKETHWAIT & ADRIAN WOOLRIDGE, *GOD IS BACK* (2009); AMY SULLIVAN, *THE PARTY FAITHFUL* (2008); Arthur C. Brooks, *Our Religious Destiny*, WALL ST. J., Aug. 20, 2007, at A11.

25. See BARBARA HARGROVE, *THE SOCIOLOGY OF RELIGION* 128 (1979).

26. See Frederick Mark Gedicks, *Spirituality, Fundamentalism, Liberty: Religion at the End of Modernity*, 54 DEPAUL L. REV. 1197, 1216–18 (2005) [hereinafter Gedicks, *End of Modernity*] (describing the significant ways in which denominational religion has shifted to accommodate modern and post-modern trends in American belief).

27. Gallup poll data show a decline in the percentage of Americans reporting weekly attendance at religious services from the high 40s in the 1950s to the low 40s in the 1970s. See GEORGE GALLUP, JR. & SARAH JONES, 100 QUESTIONS & ANSWERS: RELIGION IN AMERICA 201–04 (Hermitage, 1989). Gallup data also shows that after remaining generally flat for several decades, this percentage declined again in the 2000s, from the low 40s to the high 30s. See Gallup, “Religion,” <http://www.gallup.com/poll/1690/Religion.aspx> (last visited Dec. 30, 2009) (those who report having attended church within the last seven days declined from 44% in 2000 to 38% in 2008, and those who report attending church at least once a week declined from 35% to 30% during the same period).

28. C. Kirk Hadaway, Penny Long Marler & Mark Chaves, *What the Polls Don’t Show: A Closer Look at U.S. Church Attendance*, 58 AM. SOC. REV. 741 (1993) (finding that actual attendance is about 20%, or about one-half of the rate usually shown by self-reported poll data); Stanley Presser &

seventy-six million (or about one-third) report never attending services.²⁹ Large numbers of mainline Protestants have rejected the divinity of Jesus and his literal resurrection—the theological core of traditional Christianity.³⁰ Similarly, American Catholicism suffers from declining attendance at Mass,³¹ a dramatic shortage of priests,³² and overwhelming rejection of the Church's teachings on sexuality and the "natural family."³³ Even among American Mormons, whose church was once the fastest growing religion in the United States, membership growth in the United States has stagnated,³⁴ and activity rates are declining,³⁵ especially among new converts

Linda Stinson, *Data Collection Mode and Social Desirability Bias in Self-Reported Religious Attendance*, 63 AM. SOC. REV. 137 (1998) (finding that the apparent social desirability of church attendance inflates self-reports of church attendance figures, and that substantially fewer than 30% of Americans attend church weekly, compared to self-reported percentages ranging from the high 30s to the low 40s).

29. *Spirituality May Be Hot in America, but 76 Million Adults Never Attend Church*, THE BARN A UPDATE (Barna Group, Ventura, Cal.), Mar. 20, 2006, available at <http://www.barna.org/barna-update/article/5-barna-update/158-spirituality-may-be-hot-in-america-but-76-million-adults-never-attend-church>.

30. See Walter Russell Meade, *God's Country?*, FOREIGN AFF., Sept.–Oct. 2006, at 24, 30–31; cf. ROBERT P. JONES & DANIEL COX, MAINLINE PROTESTANT CLERGY VIEWS ON THEOLOGY AND GAY AND LESBIAN ISSUES: FINDINGS FROM THE 2008 CLERGY VOICES SURVEY 5 (2009), available at [http://www.publicreligion.org/objects/uploads/fck/file/CVS Theology and LGBT.pdf](http://www.publicreligion.org/objects/uploads/fck/file/CVS%20Theology%20and%20LGBT.pdf) (observing that numerous mainline Protestant clerics reject the historicity or literalness of traditional Christian theological claims).

31. See, e.g., Catholic News Agency, *Bishops to Analyze Mass Attendance, Recent Data on U.S. Catholic Church*, June 12, 2008, <http://www.catholicnewsagency.com/new.php?n=12919> (reporting that about 25% of American Catholics attend mass each week, and that such attendance is higher among older Catholics); GEORGETOWN UNIV. CTR. FOR APPLIED RESEARCH IN THE APOSTOLATE, SELF-REPORTED MASS ATTENDANCE BY U.S. CATHOLICS UNCHANGED IN LAST FIVE YEARS (2005) available at <http://cara.georgetown.edu/AttendPR.pdf> (reporting decline in self-reported attendance at mass by American Catholics from peak of 75% in late 1950s to low of 31% in 2004); Lydia Saad, *Church-Going Among U.S. Catholics Slides to Tie Protestants*, GALLUP, Apr. 9, 2009, <http://www.gallup.com/poll/117382/church-going-among-catholics-slides-tie-protestants.aspx> (reporting that percentage of Catholics who attended church in the past seven days has declined from 75% in the 1950s to 45% in the 2000s).

32. Kent Garber, *What to Do About the Priest Shortage*, U.S. NEWS & WORLD REP., Apr. 18, 2008 available at <http://www.usnews.com/articles/news/2008/04/18/what-to-do-about-the-priest-shortage.html> (reporting decline in diocesan priests from just over 36,000 in 1975 to less than 28,000 in 2007, and decline in overall priests—including members of religious orders—from nearly 59,000 in 1975 to about 41,500 in 2007).

33. Peter Steinfels, *Vatican Watershed—A special report.: Papal Birth-Control Letter Retains Its Grip*, N.Y. TIMES, Aug. 1, 1993, at 1 (reporting that 8 in 10 Catholics disagree that artificial contraception is wrong, that 9 in 10 believe that one who uses such contraception can still be a "good Catholic," that 44% believe that premarital sex is "not wrong at all," and that Catholic teachings in this area generally lack credibility with American women and young people); see generally LESLIE WOODCOCK TENTLER, CATHOLICS AND CONTRACEPTION (2004).

34. Independent survey evidence shows that the number of Americans who leave the LDS Church each year is approximately equal to the number that join it. E.g., CUNY SURVEY, *supra* note 22, at 24–25 (data showing that net LDS membership growth in the U.S. was flat in 2001); PEW SURVEY, *supra* note 21, at 26 (data showing that net LDS membership in the U.S. declined slightly in 2007); see also Peggy Fletcher Stack, *LDS Church's worldwide growth slows down; Mormon myth: The belief that the church is the fastest growing faith in the world doesn't hold up; Church growth slower than believed*, SALT LAKE TRIB., July 26, 2005, available at <http://www.baylor.edu/pr/bitn/news.php?action=story&story=34943> [hereinafter Stack, *Worldwide Growth*]; Peggy Fletch-

and young adults.³⁶ Perhaps most significant, overwhelming majorities of American believers (and remarkably, more than half of evangelical teens) do not accept the idea of “absolute truth,” believing instead that what is morally true depends on the circumstances and that the truths taught by all religions can be equally valid.³⁷

What now matters to a substantial number of American believers is less the cosmic truth of their religious beliefs and more the meaning of those beliefs in their individual lives.³⁸ Belief in the United States has settled into the insightful (if unflattering) observation offered by Will Herberg more than half a century ago: What is important in the United States is the act of belief, not its object or content.³⁹ In philosophical terms, the religious metaphysics of transcendence is being replaced by a postmetaphysics of immanence. This new approach to belief, often simply called “spirituality,” does not focus on the omnipotent monotheistic God who stands outside of history in judgment of humanity. Its emphasis, rather, is the personal meaning constructed of belief by each believer—which may not apply, or apply in the same way, to anyone else. Instead of an object of worship connected to metaphysical accounts of universal truth and independent reality, this version of belief consists of a subject who constructs a personal truth and reality that make little claim on anyone else.⁴⁰

er Stack, *Unintended Consequence of Church's 'Raising the Bar'*, SALT LAKE TRIB., July 26, 2005 available at <http://www.religionnews blog.com/11795/unintended consequence of churchs raising the bar> (last visited Dec. 30, 2009) [hereinafter Stack, *Unintended Consequences*] (reporting that more stringent requirements for LDS missionary service may have caused a drop in convert baptisms).

The LDS Church itself claims “steady growth” based on its own interpretation of its records. CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, *Church Statistics Reflect Steady Growth* NEWSROOM, Apr. 11, 2007, <http://newsroom.lds.org/ldsnewsroom/eng/news-releases-stories/church-statistics-reflect-steady-growth>.

35. See Stack, *Worldwide Growth*, *supra* note 34 (reporting research estimate that between 40% and 50% of Latter-day Saints in the U.S., Canada, and the Pacific Islands are regular participants in worship services and other church activities, and that only about one-third of all Latter-day Saints are regular participants).

36. See Shawn Landis, *Low LDS Convert Retention Rate: The Growth of the Mormon Church Now Relies on People Born into Faith*, MORMONISM, July 5, 2008, http://mormonism.suite101.com/article.cfm/low_lds_convert_retention_rate; see generally Gordon B. Hinckley, *Some Thoughts on Temples, Retention of Converts, and Missionary Service*, THE ENSIGN, Nov. 1977, at 49, available at <http://lds.org> (search “some thoughts on temples”; follow hyperlink); Shaun D. Stahle, *Retaining Converts Begins with Understanding Difficulties*, CHURCH NEWS, July 8, 2006, available at <http://www.ldschurchnews.com/articles/49180/Retaining-converts-begins-with-understanding-difficulties.html>.

37. See *Americans Are Most Likely to Base Truth on Feelings*, THE BARN UPDATE (Barna Group, Ventura, Cal.) (Feb. 12, 2002), available at <http://www.barna.org> (search “Americans truth feel”; follow hyperlink); Dale Buss, *Houses of Worship: Christian Teens? Not Very*, WALL ST. J., July 9, 2004, at W13; see generally CHARLES TAYLOR, *A SECULAR AGE* 12 (2007) (observing that contemporary life has “largely eroded” the traditional forms of “immediate certainty”).

38. See French, *supra* note 20, at 162–65; Warner, *supra* note 18, at 1075–76, 1078–79; see generally ALAN WOLFE, *THE TRANSFORMATION OF AMERICAN RELIGION* (2003).

39. See WILL HERBERG, *PROTESTANT - CATHOLIC - JEW* 89 (Univ. of Chicago Press 1983). See generally PETER L. BERGER, *THE SACRED CANOPY* (Anchor Books 1990).

40. For a detailed examination of the spirituality movement in the United States, see Gedicks, *End of*

Spirituality is a kind of postmodern deism, an updated version of the eighteenth century belief that a supreme being or force set the world in motion, but does not intervene in its affairs.⁴¹ Spirituality likewise acknowledges a vague “higher power,” but allocates to it a diminished claim on the day-to-day life of those who believe in it.⁴² This “just barely belief” has a distinguished pedigree—it represented, for example, the belief of many of the founders,⁴³ including iconic ones like Washington and Jefferson. A form of it was also common in the late nineteenth century, especially among university educators.⁴⁴ This belief seems to have returned with the ambiguous failure of secularization.

II. PLURALISM, POSTMODERNISM, AND THE DEVOLUTION OF BELIEF

At the outset of the twenty-first century, then, a substantial number of believers in the United States have shed the traditional understanding of religious truth in favor of a postmodern focus on religion’s personal meaning. This phenomenon is the most recent manifestation of a centuries-long devolution of belief. This began with the shift from the age of Christendom in the Middle Ages, when Catholic Christianity so permeated society that unbelief was hardly conceivable, to Enlightenment, whose displacement of Christian belief with reason, science, and technology made the unbelieving life a plausible and persuasive alternative to belief.⁴⁵ Two currents of Enlightenment thought undermined belief: an understanding of the physical and natural sciences as the only reliable means of ascertaining the true character of the world, and a related expectation that reason would free humanity from the regressive and oppressive pressures of religion.⁴⁶

Modernity, *supra* note 26, at 1215–19. *See also* TAYLOR, *supra* note 37, at 143 (“A way of putting our present condition is to say that many people are happy living for goals which are purely immanent; they live in a way that takes no account of the transcendent.”); French, *supra* note 20, at 165–67 (describing “grocery cart” or “cafeteria-style” belief).

41. Jonathan Kvanvig, *Creation and Conservation*, July 12, 2007, in STANFORD ENCYCLOPEDIA PHIL. (2007), <http://plato.stanford.edu/entries/creation-conservation/>; *see also* TAYLOR, *supra* note 37, at 220–25 (describing various facets of Enlightenment deism).

42. *See* Gedicks, *End of Modernity*, *supra* note 26, at 1215–19.

43. *See, e.g.*, Warner, *supra* note 18, at 1049–50 (noting that only about 10% of the population belonged to a church at the time of the Revolution, and that deism and skepticism were prevalent among the founders).

44. GEORGE M. MARSDEN, *THE SOUL OF THE AMERICAN UNIVERSITY* 113–21 (1994).

45. Gedicks, *End of Modernity*, *supra* note 26, at 1200, 1202. This is also a pervasive theme in TAYLOR, *supra* note 37 *passim*.

“Christendom” is the name applied to the period from roughly the 7th to the 14th century when European society was organized by a unified Christian church under the auspices of the Papacy and the Roman Catholic Church. *See* THOMAS BOKENKOTTER, *A CONCISE HISTORY OF THE CATHOLIC CHURCH* 97–169 (rev. & expanded ed., Doubleday 2004); TAYLOR, *supra* note 37, at 148; 1 ERNST TROELTSCH, *THE SOCIAL TEACHING OF THE CHRISTIAN CHURCHES* 246–56 (Olive Wyon trans., John Knox Press 1992) (1912).

46. GIANNI VATTIMO, *BELIEF* 28–29 (Luca D’Isanto & David Webb trans., Stanford Univ. Press 1999) [hereinafter VATTIMO, *BELIEF*]; Gedicks, *End of Modernity*, *supra* note 26, at 1199–1200,

Enlightenment, in its turn, has been undermined by postmodernism; even in the physical and natural sciences, the subjectivity of investigation is understood to color the purportedly objective truths that scientific investigation uncovers,⁴⁷ while science and reason have fallen well short of delivering the full human emancipation they once promised.⁴⁸

We now find ourselves in a postmetaphysical era that is eroding the once-popular idea that truth exists independent of human beings, and replacing it with the idea that truth is produced by the response of human beings to the situations in which they find themselves. This is “the post-modern condition” that now characterizes the West: the end of a single universal explanation of the world of which human beings must necessarily take account, and the inevitability of innumerable contingent accounts whose influence on humanity depends on attractiveness, persuasion, and individual choice.⁴⁹

The demise of Enlightenment was a mixed blessing for religion. It permitted religion to return from the epistemological exile to which secularization had consigned it, but this return has been fraught with paradox. On the one hand, the displacement of Enlightenment by postmodernity precludes the exclusion of belief simply because it does not conform to a scientific or rationalist epistemology.⁵⁰ But on the other hand, religion

1202; IMMANUEL KANT, *An Answer to the Question: “What is Enlightenment?”*, in KANT’S POLITICAL WRITINGS 54, 54 (Hans Reiss ed., H.B. Nisbet trans. 1970).

47. See Gedicks, *End of Modernity*, *supra* note 26, at 1203–06; Gianni Vattimo, *Toward a Nonreligious Christianity*, in JOHN D. CAPUTO & GIANNI VATTIMO, *AFTER THE DEATH OF GOD* 27, 29 (Jeffrey W. Robbins ed. 2007) [hereinafter Vattimo, *Nonreligious Christianity*]; e.g., RONALD CREASE, *THE PLAY OF NATURE* (1993); THOMAS KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (University of Chicago Press 1962).

48. See VATTIMO, *BELIEF*, *supra* note 46, at 28–29; Gedicks, *End of Modernity*, *supra* note 26, at 1204–06.

49. JEAN-FRANÇOIS LYOTARD, *THE POSTMODERN CONDITION* (Geoff Bennington & Brian Massumi trans., Univ. of Minn. Press 1984) (1979).

Italian philosopher Gianni Vattimo urges that the loss of metanarratives described by Lyotard is the best meaning of the so-called “death of God.” See, e.g., VATTIMO, *AFTER CHRISTIANITY* 3 (Luca D’Isanto trans., 2002) (“‘God is dead’ means nothing else than the fact that there is no ultimate foundation.”); Gianni Vattimo, *Dialetta, differenza, pensiero debole*, in *IL PENSIERO DEBOLE* 12, 18 (Milano: Feltrinelli, Gianni Vattimo & Pier Aldo Rovatti 7th ed. 1990) (“[T]he announcement that God is dead [signifies] that the strong structures of metaphysics—*archai*, *Gründe*, first proofs, and ultimate destinies—were only forms of reassurance of thought in epochs in which technology and social organization lacked the capacity, that now exists, to live in a horizon that is more open, less ‘magically’ guaranteed.”) (author’s translation) [hereinafter Vattimo, *Pensiero Debole*].

50. Gedicks, *End of Modernity*, *supra* note 26, at 1206; cf. VATTIMO, *AFTER CHRISTIANITY*, *supra* note 49, at 86, 88.

[T]he decline of the great metanarratives—i.e., of the systematic philosophies that had claimed to grasp the true structure of reality, the laws of history, and the method for acquiring knowledge about the only “truth”—has put an end, too, to the strong reasons for philosophical atheism. . . . The idea of demythification has been demythified as well, because critical reason has discovered (following Nietzsche) the mythical and ideological nature of claiming a truth that would be free from ideology and myth.

Id.; VATTIMO, *BELIEF*, *supra* note 46, at 92 (observing that “the dissolution of metaphysical reason, of its claim to grasp true Being once and for all, allows me also to accept a measure of ‘myth’ in my

cannot return with the privileges that Christianity enjoyed under Christendom, or that science and reason enjoyed under Enlightenment.⁵¹ Like all narratives in the age of postmodernity, religion cannot plausibly claim to be the one truth, but only one truth among many.⁵²

Four attributes of contemporary religious truth confirm this devolution of belief. In stark contrast to the universal God and truth and reality of Christendom, contemporary gods, truths, and realities are multiple, indeterminate, individually customized, and ubiquitous.

A. Multiplicity

One can barely count the sheer number of religious truth-claims that have some American currency—that is, truths in which significant numbers believe, even if these numbers are not large in an absolute sense. There are several hundred different religions, denominations, and sects represented among believers in the United States,⁵³ not to mention multiple shades of unbelief.⁵⁴ Moreover, the well-documented effects of the post-modern spirituality movement, such as the blurring of traditional denominational lines in contemporary churches and the mixing and matching of denominational doctrines and practices,⁵⁵ guarantee innumerable permutations of formal denominational categories. In short, contemporary religious pluralism surely dwarfs whatever modest varieties of belief were apparent during Christendom.⁵⁶

B. Indeterminacy

It is impossible in the current age to decisively demonstrate the accuracy of any particular religious account of God and truth and reality to

life, which need not necessarily be translated in rational terms"); Gianni Vattimo, *The Age of Interpretation*, in RICHARD RORTY & GIANNI VATTIMO, *THE FUTURE OF RELIGION* 43, 46 (Santiago Zabala ed., Columbia Univ. Press 2005) (2004) [hereinafter, Vattimo, *Interpretation*] (observing that the "mass media . . . make the idea of a 'unique' world picture impossible").

51. Gedicks, *End of Modernity*, *supra* note 26, at 1207.

52. VATTIMO, *AFTER CHRISTIANITY*, *supra* note 49, at 18–19; see Gedicks, *End of Modernity*, *supra* note 26, at 1207.

53. See ARTHUR CARL PIEPKORN, *PROFILES IN BELIEF, THE RELIGIOUS BODIES OF THE UNITED STATES AND CANADA* (Harper & Row 1977); cf. Warner, *supra* note 18, at 1058–64 (describing and documenting the remarkable breadth of religious pluralism in the contemporary United States).

Scholars have pointed to immigration reforms in the 1960s, which liberalized strict limitations on Asian immigration, as a particular catalyst for the growth of contemporary religious diversity in the United States. See, e.g., Diana L. Eck, *Prospects for Pluralism: Voice and Vision in the Study of Religion*, 75 J. AM. ACAD. RELIGION 743, 750 (2007); French, *supra* note 20, at 144–47.

54. See Gedicks & Hendrix, *Uncivil Religion*, *supra* note 21, at 285, 287–88.

55. See Gedicks, *End of Modernity*, *supra* note 26, at 1216–17; Gedicks & Hendrix, *Uncivil Religion*, *supra* note 21, at 286–87.

56. Warner, *supra* note 18, at 1068 ("While in medieval Europe there was only one 'the' Church, religion in America has taken many forms, denominational and congregational among them.").

someone who doesn't already believe it. This is a consequence of enlightenment's own limitations: Not everything that is meaningful to human beings can be subjected to a rationalist or scientific epistemology.⁵⁷ People convert to new faiths, or persist in old ones, but this conversion and persistence are not methodological—that is, they are not the result of applying a neutral procedure that can be repeated with predictably identical results for each such repetition, regardless of who repeats it.⁵⁸ The “truth” of religious truths, in other words, cannot be demonstrated scientifically or rationally. Unlike belief in the Middle Ages, when theologians and philosophers took seriously the task of demonstrating the universal truth of Christianity,⁵⁹ claims that a contemporary account of reality is universally, absolutely, and exclusively true are taken seriously mostly within communities of already like-minded believers.

C. Customization

Contemporary religious truths are increasingly constructed by their believers. Contemporary belief focuses on meaningfulness to the believer—who belief causes a person to think she is, or what it makes a person feel about himself.⁶⁰ Sociologists and others have noted the popularity of “cafeteria-style” belief—believers who pick and choose religious beliefs and practices from among different and even conflicting conceptions of God and truth and reality.⁶¹ Whether and what one believes today is so much more a question of what one would like to believe, or find useful to believe, or be happy to believe.

Christendom again provides a useful contrast. During the Middle Ages, people had little choice about what to believe, if they even perceived the possibility of something other than the single and universal Christian reality. The social situation into which people were born bounded what little choice they could exercise about belief.⁶² That one could tailor a god and truth and reality to his or her individual needs was

57. See, e.g., RICHARD JOHN NEUHAUS, *THE NAKED PUBLIC SQUARE* 135–36 (1984) (“[M]ost of the things that we believe really matter—love, community, honor, purpose in life—are not subject to scientific measure and control.”); PAUL TILlich, *THEOLOGY OF CULTURE* 54 (1959) (“[N]ot everything in reality can be grasped by the language which is most adequate for mathematical sciences.”); JAMES BOYD WHITE, *WHEN WORDS LOSE THEIR MEANING* 22 (1984) (“The region that can be ruled by the methods of logic and science, and by the parts of the mind that function in these ways, is, after all, rather small; and, for good or ill, much the larger part of human life must proceed without the certainties these two forms of reasoning provide.”).

58. See generally HANS-GEORG GADAMER, *TRUTH AND METHOD* 3–7, 328–29 (Joel Weinsheimer & Donald G. Marshall eds., 3d ed. 2004).

59. See, e.g., THOMAS AQUINAS, *SUMMA THEOLOGICA* (Daniel J. Sullivan ed., Laurence Shopcote trans., rev. 2d ed., Encyclopedia Britannica 1984) (1894).

60. See Gedicks, *End of Modernity*, *supra* note 26, at 1219.

61. See, e.g., French, *supra* note 20, at 165–67; Warner, *supra* note 18, at 1079.

62. See TAYLOR, *supra* note 37, at 45, 163–64, 192.

literally inconceivable. By contrast, “who one is” today, if not entirely a matter of personal choice, is clearly not bounded by a plenary account of truth and reality.⁶³

D. Ubiquity

Finally, information about religious truths is ubiquitous. Thanks to the telecommunications revolution, information about the vast array of indeterminate and personally constructed religious truths is easily and everywhere accessible.⁶⁴ The raw material of contemporary religious belief—the information that describes all the possibilities of gods and truths and realities—is available to anyone with a computer and an Internet connection. The Internet and the World Wide Web allow even the superficially curious to obtain information about other religious worlds.⁶⁵

Markets require information, and markets of religious belief are no different. Five hundred years ago, information about the various possibilities of even Christian belief was circulated, if at all, only among clerics and social elites.⁶⁶ The notion of a “marketplace of ideas” could not function as even a metaphorical description of the currency of religious truths if there were little accessible information of what those truths might be. The explosion of information today enables religious marketplaces to function.⁶⁷

E. Virtual Belief

The whimsically named “Belief-O-Matic” is a perfect example of a contemporary cultural phenomenon that combines and illustrates the multiple, indeterminate, customized, and ubiquitous nature of religious truth in the digital age. A feature of the high-traffic Beliefnet website,⁶⁸ Belief-

63. See TAYLOR, *supra* note 37, at 165.

64. E.g., Eck, *supra* note 53, at 5–6 (describing the widespread information available in Boston about Hinduism as the result of digitization and globalization); see Frederick Mark Gedicks & Roger Hendrix, *Religious Experience in the Age of Digital Reproduction*, 79 ST. JOHN’S L. REV. 127, 149 (2005) [hereinafter Gedicks & Hendrix, *Digital Reproduction*].

65. See VATTIMO, *AFTER CHRISTIANITY*, *supra* note 49, at 76–77 (noting that telecommunications technology has facilitated a reorientation of the European mentality towards alterity, fantasy, and novelty).

66. See Hans J. Hillerbrand, *On Book Burnings and Book Burners: Reflections on the Power (and Powerlessness) of Ideas*, 74 J. AM. ACAD. RELIGION 593, 595–98 (2006).

67. See Gedicks & Hendrix, *Digital Reproduction*, *supra* note 64, at 152–54, 59.

68. See <http://www.beliefnet.com> (last visited Dec. 30, 2009). An exemplar of the spirituality movement, Beliefnet claims to receive three million unique visitors a month and to have 11 million subscribers to its daily email newsletter. See Wolfgang Gruener, *Fox acquires spiritual website Beliefnet*, TGDAILY, Dec. 4, 2007, <http://www.tgdaily.com/content/view/35123/122/>. It describes its mission as:

[H]elp[ing] people like you find, and walk, a spiritual path that will bring comfort, hope, clarity, strength, and happiness.

O-Matic is a self-administered survey of one's personal theology that promises to accurately match the respondent's spiritual inclinations to the most likely of the hundreds of contemporary possibilities.⁶⁹ With free-ranging theological choices, willful ignorance of theological proofs, customized combinations of beliefs and practices, and digital ease of access, Belief-O-Matic has all the trappings of postmodern religious belief.

III. THE POSTMODERN CONDITION OF BELIEF

When "God," "truth," and "reality" become "gods," "truths," and "realities," when they are multiple, indeterminate, customized, and ubiquitous, they point to a thinner, diluted sense of what human life "is." Italian philosopher Gianni Vattimo calls our current age one of "weak thought," because many now doubt the truth of universal or "strong" accounts of reality.⁷⁰ Thought in a postmodern condition is "weak" precisely because claims of truth can no longer present themselves as accurate reflections of an objective structure, but only as uncertain interpretations.⁷¹ The confident metaphysics of Christendom and Enlightenment presupposed a single, strong, and unified account of the truth; by contrast, postmodernity supplies only marketplaces of truth in which mere possibilities or interpretations compete for adherents.⁷²

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69. <http://www.beliefnet.com/Entertainment/Quizzes/BeliefOMatic.aspx> (last visited Dec. 30, 2009).

70. See VATTIMO, BELIEF, *supra* note 46, at 36 (noting the "weakening of strong structures" in the contemporary world, "of the claimed peremptoriness of the real that is given 'there, outside', like a wall against which one beats one's head"); Vattimo, *Pensiero debole*, *supra* note 49, at 22 (suggesting the "need 'to leave behind being as the foundation,'" and recognize the "weak thought beyond metaphysics") (quoting Heidegger) (author's translation).

71. VATTIMO, BELIEF, *supra* note 46, at 45; *accord id.* at 60 (arguing that the Gospel can no longer be understood as a message with a self-declaring meaning; "salvation takes place through interpretation"); Vattimo, *Pensiero Debole*, *supra* note 49, at 26 ("The truth is the result of interpretation . . . because it is only in the interpretive process, understood primarily in reference to the Aristotelian sense of hermeneia, expression, formulation, that the truth is constituted.") (author's translation); Vattimo, *Interpretation*, *supra* note 49, at 44 ("The existential analytic (section 1 of *Being and Time*) makes us aware that knowledge is always interpretation and nothing but this."); Vattimo, *Nonreligious Christianity*, *supra* note 47, at 28 ("[T]here is no experience of truth that is not interpretive."). See generally RICHARD RORTY, *PHILOSOPHY AND THE MIRROR OF NATURE* (1979).

72. PEW SURVEY, *supra* note 21, at 5-6; Warner, *supra* note 18, at 1050-58; see French, *supra* note 20, at 182-83 (describing the commodification and marketing of religion); Gedicks & Hendrix, *Digital Reproduction*, *supra* note 64, at 158-59 (describing the flexibility necessary for religion to thrive in a digitized market economy).

In such circumstances, it is not possible to reach consensus on any single account of God and truth and reality that would authoritatively define the “is” of human life for all or even most of a society. The more plausible choices one has, in other words, the less likely it is that any single one can recommend itself as the only true one.⁷³ In the face of multiplicity, plurality, customization, and ubiquity, reality declines from a self-existent cosmic fact to which submission is unavoidable, to a personal aesthetic chosen to meet one’s individual needs and preferences.⁷⁴ Contemporary thought is “weak” because, as Vattimo trenchantly observes, a reality that is no longer understood as “the stable presence of things . . . that the mind can mirror objectively,” but instead as the mere consequence of subjective interpretations and choices, is “a diminished reality.”⁷⁵

A. *Weak Thought and Strong Belief*

There is nothing in postmodernism that precludes people from believing in “strong thought”—that is, universal accounts of God and truth and reality. Expressions of such beliefs are common in private settings—in church, among family, with friends. There may be a certain discourtesy, however, in expressing broadly and publically that such accounts are universally applicable and absolutely true. In elections held by pluralistic societies where no religious truth can plausibly maintain its sole validity to the exclusion of all others, publically claiming the exclusive truth for one’s own beliefs (and implicitly suggesting that everyone else’s are false) functions as a kind of name-calling.

Asserting religious truth-claims in electoral politics, then, is at least bad political manners.⁷⁶ Etiquette functions precisely to avoid disclosures that needlessly hurt oneself or others. (What’s the point of telling me that you didn’t like that wedding gift?) As we should have learned in kinder-

73. See Berger, *Sociology of Religion*, *supra* note 20, at 449 (“Modernity pluralizes the lifeworlds of individuals and consequently undermines all taken-for-granted certainties.”).

74. See Gedicks & Hendrix, *Digital Reproduction*, *supra* note 64, at 133.

The digital revolution has served up direct access to a virtually unlimited array of information and images in North America, western Europe, and the rest of the online world, stimulating individuals to an awareness of spiritual choices and possibilities that were unimaginable only a generation ago. At the same time, postmodernism has underlined the implausibility of achieving social consensus on reality and truth in the face of widespread and persistent religious difference. The coincidence of epistemological uncertainty with direct individual access to vast global fields of information empowers individuals to choose for themselves from among the innumerable versions of the real and the truth now available to them.

Id.

75. VATTIMO, *AFTER CHRISTIANITY*, *supra* note 49, at 50; *accord id.* at 51 (defining the “weakening of Being[]” as the reduction of reality “to the conflict or play of interpretation”).

76. Cf. Richard Rorty, *Religion as a Conversation Stopper*, in RICHARD RORTY, *PHILOSOPHY AND SOCIAL HOPE* 168, 169 (1999) (observing that the “happy, Jeffersonian compromise” of “privatizing religion” makes “it seem bad taste to bring religion into discussions of public policy”).

garten, name-calling ends in hurt feelings, lost friends, and fights. An etiquette that excludes religious truth-claims from electoral politics, therefore, can be understood as a rule that underwrites civil and productive political discourse.

But public expression of strong political thought is more than just a breach of etiquette. Strong thought also enables violent action.⁷⁷ As Justice Holmes famously observed, persecution has a compelling logic when the truth of one's cause is beyond doubt.⁷⁸ Consider in this regard a remarkable anecdote related by sociologist Alan Wolfe in the publicity ramp-up to Saddleback Church's town hall debate between Senators McCain and Obama during the 2008 Election. Wolfe relates that at a past panel discussion that included Wolfe and Saddleback's pastor, the best-selling evangelical author Rick Warren,⁷⁹ "a woman stood up, proclaimed her Judaism, and asked Warren if she was going to burn in hell."⁸⁰ After a pause, Warren answered, "Yes," to which the audience responded with "audible gasps."⁸¹ Evangelicals are not anti-Semites, but it is still not hard to appreciate the potential relation between a Christian theology that condemns Jews and non-Christians to eternal punishment, and persecution of Jews and non-Christians. Certainly much of the literal violence in the contemporary world is enabled by strong religious thought that diminishes the worth of those against whom that violence is directed.⁸²

Strong religious thought that is sanctioned by law can inflict a more metaphorical but still hurtful violence even in liberal democracies. Legal enforcement of the "natural," "traditional," or "nuclear" family, for example, denies to women the power to choose the economic security and self-fulfillment of work by insisting on their physical presence in the home and their economic dependence upon husbands while refusing them control over reproduction.⁸³ Inscribing the natural family in law also precludes

77. See, e.g., MARK JUERGENSMEYER, *TERROR IN THE MIND OF GOD: THE GLOBAL RISE OF RELIGIOUS VIOLENCE* 174–81 (3d ed. 2003).

78. *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting) ("If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition.").

79. Warren is the author of *The Purpose-Driven Life*, which has sold tens of millions of copies.

80. Alan Wolfe, *The Importance of Obama and McCain at Saddleback Church This Weekend*, NEW REP. BLOGS - THE PLANK, Aug. 14, 2008, <http://www.tnr.com/blog/the-plank/the-importance-obama-and-mccain-saddleback-church-weekend>.

81. *Id.* Wolfe offered this anecdote as a compliment, illustrating what Wolfe believes is an admirable seriousness and consistency in Warren's evangelical faith.

82. See MARK JUERGENSMEYER, *TERROR IN THE MIND OF GOD* 174–81 (3d ed. 2003).

83. See, e.g., *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130, 141 (1872) (Bradley, J., concurring) (defending state's refusal to admit qualified woman to the bar).

[T]he civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things,

gays and lesbians from choosing the benefits and protections of marriage, because what is natural to them departs from a supposed norm of nature that is actually dictated by the state.⁸⁴

When understood as universal and absolute, truth supplies a premise for its imposition on adherents and nonadherents alike. If a religious belief is understood to correspond to how the world really is, then it is necessarily valid for believers and unbelievers alike; why, then, wouldn't the law impose it upon everyone?⁸⁵ In a pluralistic postmodern society, however, there will be no consensus about how the world really is—or, indeed, about the very existence of a “real” world—and thus there can be no warrant for imposing beliefs on others simply because they are true. People are and must be free to believe in strong thought in a liberal democracy, but democracy also requires that such belief be accompanied by a certain humility about enacting it into law and forcibly imposing it on those who do not share it.⁸⁶

B. Contemporary Asymmetry on the Right

Strong thought is not just a temptation for the religious right. Parts of the secular left that are nostalgic for secularization (or clueless about its demise) are as dogmatic as some believers in insisting on the exclusive truth of their views.⁸⁷ Strong religious thought undeniably lies at the origin of much contemporary terrorism and violence, but it is a powerful myopia

indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interests and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband. . . . The paramount destiny and mission of woman are to fulfil the noble and benign offices of wife and mother. This is the law of the Creator.

Id.; see also Marion Crain, *Between Feminism and Unionism: Working Class Women, Sex Equality, and Labor Speech*, 82 GEO. L.J. 1903 (1994).

84. See, e.g., David B. Cruz, “Just Don’t Call It Marriage”: *The First Amendment and Marriage as an Expressive Resource*, 74 S. CAL. L. REV. 925, 926–30 (2001).

85. Vattimo, *Interpretation*, *supra* note 50 at 48; see also W. Cole Durham, *Perspectives on Religious Liberty: A Comparative Framework*, in RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: LEGAL PERSPECTIVES 1, 7 (Johan D. Van der Vyver & John Witte, Jr. eds., 1996) (“For much of human history, it was assumed that religious truth required state implementation of religious beliefs and that political stability presupposed religious and cultural homogeneity. As a matter of logic, it was thought that if a particular set of religious beliefs are true, their truth provides a natural rationale for implementing them.”).

There are, of course, counterarguments to the imposition of truth even when one is certain of its validity. See, e.g., James Madison, *Memorial and Remonstrance Against Religious Assessment*, in 2 THE WRITINGS OF JAMES MADISON: 1783–1787 at 183 (1910), available at <http://oll.libertyfund.org> (search “writings of James Madison”) (arguing that coerced belief is an affront to God and ineffective in saving one’s soul).

86. VATTIMO, *AFTER CHRISTIANITY*, *supra* note 49, at 78.

87. See Berger, *supra* note 19, at 27; Daniel O. Conkle, *Secular Fundamentalism, Religious Fundamentalism, and the Search for Truth in Contemporary America*, 12 J.L. & RELIGION 337, 340–50 (1995) (describing variations of “dogmatic, extreme, or fanatical” secular thought) *id.* at 341.

that cannot recognize the strong secular thought that is also at work in the violence of history.

Although strong thought is a temptation for both the religious right and the secular left, current threats to liberal democratic values come more from the former than the latter. In the postmodern world, religion can indeed participate fully in the marketplace of ideas, even the political marketplace, so long as it participates as a truth rather than the truth. The secular left takes this epistemological agnosticism for granted. Not so the religious right; many conservative faiths not only believe that theirs is the truth that excludes all others, but also feel the additional need to work for its incorporation into law and policy. Thus, as Professor Modak-Truran has observed, the failure of secularization has created an opening for the return of less separationist paradigms of church-state relations.⁸⁸ This is obviously not an opening for the return of Christendom; no mainstream religious group supports a relationship of church and state that approaches what existed between Catholicism and the feudal societies of the Middle Ages. But many religious conservatives seem comfortable with a relationship in which Christianity would be governmentally preferred, and the political equality of religious dissenters replaced with their mere toleration by a Christian government.⁸⁹

For example, the ambiguous boundaries of the “Judeo-Christian tradition” mask a classic toleration of non-Christians. Judeo-Christianity offers itself as a benignly inclusive umbrella of “civil religion” that seems to shelter the religious and moral sensibilities of nearly all Americans. But its symbols and practices, such as invocations of God in the Pledge of Allegiance and on coins and banknotes, government-sponsored displays of the Christmas nativity and the Ten Commandments, and government-sponsored prayer, symbolize a much narrower conservative Christian conception of church and state. On the one hand, Judeo-Christianity is presented as if it includes every Christian and Jew in the United States; sometimes its adherents even expand it to include Muslims in a supposed “Abrahamic” or monotheistic tradition.⁹⁰ This inclusive, expansive presentation of Judeo-Christianity is particularly effective in building coalitions for electoral initiatives on values issues, for it reaches out to conservative minority faiths as if common political cause were true belonging.⁹¹

88. Modak-Truran, *supra* note 20, at 191.

89. E.g., Douglas Laycock, *Church and State in the United States: Competing Conceptions and Historic Changes*, 13 IND. J. GLOBAL LEGAL STUD. 503, 531 (2006); Michel Rosenfeld, *Derrida's Ethical Turn and America: Looking Back from the Crossroads of Global Terrorism and the Enlightenment*, 27 CARDOZO L. REV. 815, 828 (2005); see Gedicks & Hendrix, *Uncivil Religion*, *supra* note 21, at 299–304.

90. See, e.g., *McCreary County v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 893–94 & n.3 (2005) (Scalia, J., dissenting) (arguing that government preference of monotheism is not an unconstitutional establishment of religion because 97% of Americans are either Christians, Jews, or Muslims).

91. See, e.g., Michelle Goldberg, *Proposition 8, the Mormon Coming Out Party*, RELIGION

In fact, however, Judeo-Christian symbols have been appropriated by conservative Christians as symbols of their normative preeminence in the United States. Far from being an inclusive umbrella of civil religion, Judeo-Christianity is freighted with religious, Christian, and conservative Christian meaning.⁹² When government adopts these symbols as its own, therefore, it sends a message of sectarian exclusion, not religious inclusion.⁹³ For example, Muslims are monotheists, and Mormons believe in the saving power of Jesus, but this has not saved electoral candidates of either group from attacks on the truths of their respective religions. That one can intellectually fit Islam into a supposed Abrahamic tradition, or Mormonism into a supposed Judeo-Christian one, does not normalize these religions in electoral politics. When it comes to who is eligible to wield government power, the apparent expansiveness of the Judeo-Christian tradition disappears, excluding Muslims, Mormons, and even the Jews who give the tradition its veneer of inclusivity.

Indeed, Jews figured this out long ago. They know from history that they do not easily fit in a Christian culture, no matter how often it is rhetorically linked to Judaism.⁹⁴ A separationist and secular public culture is often more hospitable to non-Christian minorities than one controlled by conservative Christians, however benignly and inclusively the latter culture might present itself. As Karl Marx observed, the political and cultural dominance of Christianity enables it to control society implicitly, without making exclusionary sectarian arguments, merely by encouraging profession of "religion in general, any kind of religion."⁹⁵

Mormons have yet to figure this out. They worked hard for their inclusion in the Christian mainstream, and thought they had succeeded. Many were surprised by the unembarrassed public attacks on their faith by conservative Christian voters during the 2008 Republican primaries.⁹⁶ Like

DISPATCHES, Nov. 21, 2008, http://www.religiondispatches.org/archive/sexandgender/766/proposition_8_the_mormon_coming_out_party?page=entire.

92. Gedicks & Hendrix, *Uncivil Religion*, *supra* note 21, at 292–99 (arguing that Ten Commandments monuments communicate religious, Christian, and sectarian Christian meaning).

93. *Id.* at 299–302 (arguing that conservative Christians have "sectarianized" the symbols and practices of Judeo-Christianity).

94. *E.g.*, Suzanna Sherry, *Religion and the Public Square: Making Democracy Safe for Religious Minorities*, 47 DEPAUL L. REV. 499, 503–07 (1998) (observing that only Christians can authentically subscribe to the Judeo-Christian tradition); Mark Silk, *Notes on the Judeo-Christian Tradition in America*, 36 AM. Q. 65, 69–70 (1984) (same); Mark V. Tushnet, *The Conception of Tradition in Constitutional Hystiography*, 29 WM. & MARY L. REV. 93, 94 n.6 (1987) (same).

95. Karl Marx, *On the Jewish Question*, in 3 KARL MARX & FREDERICK ENGELS, COLLECTED WORKS 146, 159 (Progress 1975).

96. Harris Poll, *Many U.S. Adults are Uncomfortable Voting for a Mormon in the 2008 Presidential Race*, HARRIS INTERACTIVE, Apr. 11, 2007, at tab. 3, available at http://www.harrisinteractive.com/harris_poll/index.asp?PID=747 (reporting that 45% of adults would definitely or probably not vote for a Mormon for president); Mike Allen, *A Mormon as President?*, TIME MAG., Nov. 26, 2006, available at <http://www.time.com/time/printout/0,8816,1562941,00.html> (Bloomberg and L.A. Times poll finding that 35% of registered voters would not consider voting for a Mormon for President);

most Mormons, Romney assumed that he would fall under the shelter of Judeo-Christianity, until it became clear that too many of those who police the boundaries of that tradition were willing to vote for almost anyone before a Mormon. As one of my BYU colleagues put it, reflecting on the demise of the Romney candidacy, we Mormons “didn’t know we were Jews.”

Like the conservative denominations that exclude Mormons from the Christian mainstream, the LDS Church opposes same-sex marriage and abortion rights, it preaches a traditional conception of the heterosexual family, and its members and leaders tend to be politically and culturally conservative.⁹⁷ But it mattered little to the conservative Christians who attacked Romney’s Mormonism that Mormons agree with them on values issues.

IV. RELIGIOUS TRUTH AND PUBLIC REASON IN ELECTORAL POLITICS

Numerous liberal theorists have argued that an ethic of “public reason” should govern the role that religion and belief play in electoral politics and public policymaking.⁹⁸ The improbability that a radically plural society can reach consensus about the ultimate end or meaning of life

Linda Feldman, *Mitt Romney: Proudly, Quietly Mormon*, CHRISTIAN SCIENCE MONITOR, Aug. 9, 2007, available at <http://www.csmonitor.com/2007/0809/p01s01-uspo.html> (Newsweek poll found that 27% of the electorate, and 40% of Republicans, would not vote for a Mormon for president); David Hill, *Romney Must Revisit Beliefs*, July 7, 2008, TheHill.com/opinion/columnists/david-hill/8338-romney-must-revisit-beliefs (“A 2000 national survey by Ellison Research of 518 Protestant ministers found that 63 percent would vote for a Jewish candidate and 64 percent would vote for a Catholic but 76 percent confessed that they would be less inclined to vote for a Mormon candidate.”); see also Feldman, *supra* (reporting “anti-Mormon incidents” from “rival . . . campaigns,” and voters who “confronted Romney with hostile questions” and “refused to shake his hand”).

In fairness to conservative Christians, a number supported Romney. See, e.g., Howard Kurtz, *Limbaugh on McCain: It’s Better to Be Right All the Time*, WASH. POST, Feb. 5, 2008, at C1 (Hugh Hewitt); Michael Luo, *Meet the New Mitt Romney, the Anti-Insider Populist*, N.Y. TIMES, Feb. 5, 2008, at A17 (Sean Hannity, Laura Ingraham, Rush Limbaugh); Louise Roug, *Campaign ‘08: God, Gaming in the Political Mix*, L.A. TIMES, Jan. 18, 2008, at A14 (Sen. Jim DeMint (R-S.C.), Paul Weyrich). Moreover, Romney’s liberal past as a senatorial candidate and elected governor in Massachusetts undoubtedly contributed to his rejection by Christian conservatives.

97. Father Neuhaus, of course, was Roman Catholic and publically opposed same-sex marriage and abortion, as does his church. Discomfort with Mormonism among the orthodox Christian denominations is strongest among evangelical Protestants who are among the most committed opponents of same-sex marriage and abortion.

98. See, e.g., 2 KENT GREENAWALT, RELIGION AND THE CONSTITUTION: ESTABLISHMENT AND FAIRNESS 497-524 (2008); JOHN RAWLS, POLITICAL LIBERALISM LECT. VI, at 212-54 (1996) [hereinafter RAWLS, POLITICAL LIBERALISM]; Robert Audi, *Religious Values, Political Action, and Civic Discourse*, 75 IND. L.J. 273 (2000); Stephen Macedo, *Transformative Constitutionalism and the Case of Religion: Defending the Moderate Hegemony of Liberalism*, 26 POL. THEORY 56 (1998) [hereinafter Macedo, *Transformative Constitutionalism*]; Stephen Macedo, *Liberal Civic Education and Religious Fundamentalism: The Case of God v. John Rawls?*, 105 ETHICS 468 (1995) [hereinafter Macedo, *Liberal Civic Education*]; John Rawls, *The Idea of Public Reason Revisited*, 64 U. CHI. L. REV. 765 (1997) [hereinafter Rawls, *Public Reason Revisited*]; Michael Walzer, *Drawing the Line: Religion and Politics*, 1999 UTAH L. REV. 619.

counsels exclusion of such matters from politics and policymaking.⁹⁹ Accordingly, the ethic of public reason seeks to exclude religious and other appeals to comprehensive doctrines or philosophies from politics and policymaking,¹⁰⁰ in favor of arguments framed in language and concepts that are potentially acceptable to and actually understandable by citizens regardless of their beliefs about ultimate life-ends or meanings.¹⁰¹

John Rawls, for example, argued that a virtuous citizen in a just and well-ordered pluralistic democracy should publically argue for goals touching on constitutional fundamentals or basic justice only in terms that one might reasonably expect to persuade those who do not share her own deep beliefs about life.¹⁰² It follows that the virtuous citizen should not appeal to comprehensive religious and philosophical doctrines, or even to disputed empirical theories.¹⁰³ Rather, one should rely “only [on] presently accepted general beliefs and forms of reasoning found in common sense, and the methods and conclusions of science when these are not controversial.”¹⁰⁴ In matters of political fundamentals, arguments based on a comprehensive doctrine should be deployed only to the extent that they can be formulated as public reasons.¹⁰⁵

Public reason has its own limits. It does not apply to all of public life, but only to certain slices—electoral politics, judicial decision making, pub-

99. See, e.g., GREENAWALT, *supra* note 98, at 508; Rawls, *Public Reason Revisited*, *supra* note 98, at 766; Macedo, *Liberal Civic Education*, *supra* note 98, at 473–74.

100. See GREENAWALT, *supra* note 98, at 510 (“The most appealing single category of claims that do not count as ones of public reason are those based on comprehensive views, overarching philosophies of life.”); RAWLS, *POLITICAL LIBERALISM*, *supra* note 98, at 226 (“There is no reason why any citizen, or association of citizens, should have the right to use state power to decide constitutional essentials as that person’s, or that association’s, comprehensive doctrine directs.”).

101. See, e.g., GREENAWALT, *supra* note 98, at 498; RAWLS, *POLITICAL LIBERALISM*, *supra* note 98, at 218, 226, 241, 243; Robert Audi, *Religious Values, Political Action, and Civic Discourse*, 75 *IND. L.J.* 273, 276 (2000); Macedo, *Liberal Civic Education*, *supra* note 98, at 473–75, 477–78.

102. RAWLS, *POLITICAL LIBERALISM*, *supra* note 98, at 218.

103. RAWLS, *POLITICAL LIBERALISM*, *supra* note 98, 218, 224–25; Rawls, *Public Reason Revisited*, *supra* note 98, at 775, 780.

It is worth emphasizing that Rawls’s version of public reason excludes all comprehensive doctrines from politics, secular as well as religious. See Rawls, *Public Reason Revisited*, *supra* note 98, at 766 (“Central to the idea of public reason is that it neither criticizes nor attacks any comprehensive doctrine, religious or nonreligious, except insofar as that doctrine is incompatible with the essentials of public reason and a democratic polity.”); accord Macedo, *Liberal Civic Education*, *supra* note 98, at 480 (“Political liberals will . . . deny political power to any—including secular humanists—who would shape basic rights and principles of justice in light of their view of the whole truth.”). Other versions are more focused on excluding religious comprehensive doctrines. See, e.g., Audi, *supra* note 98; Walzer, *supra* note 98.

104. RAWLS, *POLITICAL LIBERALISM*, *supra* note 98, at 224.

105. *Id.* at 247.

Elsewhere, Rawls suggested that comprehensive doctrines may be introduced into political and policymaking discourse so long as public reasons are given to support the policies indicated by the comprehensive doctrines. See Rawls, *Public Reason Revisited*, *supra* note 98, at 776, 783–84; e.g., *id.* at 786 (“[C]itizens of faith who cite the Gospel parable of the Good Samaritan do not stop there, but go on to give a public justification for this parable’s conclusions in terms of political values.”).

lic policymaking, and political advocacy.¹⁰⁶ It thus does not apply to all of public culture, but only to government officials, to political candidates and their supporters, and to voters casting ballots in elections about constitutional fundamentals or matters of basic justice.¹⁰⁷ Public reason is, moreover, an ethical ideal, not a legal rule: it is a measure of good civic conduct to which citizens in a liberal society should aspire, not an enforceable law or statute.¹⁰⁸ As Stephen Macedo has observed, “[a]cknowledging the political authority of public reasons is one mark of a virtuous citizen, but people are entirely within their rights not to be virtuous, here as elsewhere.”¹⁰⁹

Two episodes from the 2008 electoral season illustrate the wisdom of public reason’s ethical limits on claims of religious truth in the electoral politics of a pluralist and postmodern society like the United States, and the cost of abandoning those limits: the attacks on Governor Romney during the Republican presidential primaries for his membership in the LDS Church, and that church’s intervention in the Proposition 8 initiative campaign to repeal legal recognition of same-sex marriages in California.

A. Mitt Romney and the “Mormon Question”

The pluralism of the postmodern world precludes decisive demonstrations of truth and falsity. Perhaps for this reason, religious arguments in electoral campaigns are commonly framed in terms of real-world consequences rather than other-world truths. This suggests a useful distinction: religious beliefs that have public policy implications are proper subjects of political discussion because they are susceptible to criticism or defense based on public reason, while beliefs that have no such implications are both irrelevant and difficult to discuss in terms of public reason.¹¹⁰

For example, during his campaign for the 1960 Democratic presidential nomination, President Kennedy faced questions about the extent to which the Roman Catholic hierarchy might influence his exercise of presidential powers. Kennedy successfully answered with a consistent emphasis

106. RAWLS, *POLITICAL LIBERALISM*, *supra* note 98, at 215.

107. GREENAWALT, *supra* note 98, at 499; *see* RAWLS, *POLITICAL LIBERALISM*, *supra* note 98, at 215 (“Another feature of public reason is that its limits do not apply to our personal deliberations and reflections about political questions, or to the reasoning about them by members of associations such as churches and universities”); Walzer, *supra* note 98, at 633 (arguing that with respect to conceptions of the good, “no realization can be definitive. On the religious or ideological side of the line, the good society can have an absolute form; on the political side, it is always provisional.”).

108. GREENAWALT, *supra* note 98, at 498, 499; RAWLS, *POLITICAL LIBERALISM*, *supra* note 98, at 213, 217, 253; Macedo, *Transformative Constitutionalism*, *supra* note 98, at 71.

109. Macedo, *Liberal Civic Education*, *supra* note 98, at 475.

110. *See, e.g.,* Kenneth Anderson, *Mormons, Muslims and Multiculturalism: The Deeply Dispiriting Romney-Huckabee Showdown*, WEEKLY STD., Dec. 24, 2007, at 18 (suggesting that a Buddhist’s belief in nonviolence would be relevant to evaluating his or her candidacy for public office, but not a belief in reincarnation).

on the separation of church and state, combined with a personal narrative that framed him as politically independent.¹¹¹ Romney faced similar questions about his relationship with the Mormon hierarchy should he be elected President, and he responded with similar arguments about his religious and political independence.¹¹²

Unfortunately for Romney, the principal issue for his candidacy was his mere membership in a minority religion outside of the Christian mainstream, not his susceptibility to control by that religion.¹¹³ How was Romney to answer accusations like Father Neuhaus's, whose point was not—or not just—that Romney's religious leaders would exercise an inappropriate influence on his exercise of constitutional powers, or that his religious beliefs might lead to undesirable public policies, but that those beliefs are “false?” Certainly there are no proofs to be had. It is difficult to imagine how one would show an empirical correspondence of one's beliefs to metaphysical reality in an environment in which there are radically diverse understandings of the nature of that reality, including that it doesn't even exist. Reason and rationality are of little help as well; again, it is hard to argue that the claims of Mormonism—visions of God, angelic visitations, gold scriptures, an embodied God—are unreasonable compared to such

111. See Sen. John F. Kennedy, Address to the Greater Houston Ministerial Association (Sept. 12, 1960), reprinted in LESLIE C. GRIFFIN, *LAW AND RELIGION* 468–71 (Foundation 2007).

112. Mitt Romney, “Faith in America” (Dec. 6, 2007), available at <http://www.npr.org/templates/story/story.php?storyId=16969460>.

Let me assure you that no authorities of my church, or of any other church for that matter, will ever exert influence on presidential decisions. Their authority is theirs, within the province of church affairs, and it ends where the affairs of the nation begin.

As [G]overnor, I tried to do the right as best I knew it, serving the law and answering to the Constitution. I did not confuse the particular teachings of my church with the obligations of the office and of the Constitution—and of course, I would not do so as [P]resident. I will put no doctrine of any church above the plain duties of the office and the sovereign authority of the law.

Id.

113. Paul Horwitz, *Religion and American Politics: Three Views of the Cathedral*, 39 U. MEM. L. REV. 973, 997 (2008–2009).

[F]ew if any of Romney's critics suggested that he would follow his church's bidding in any way that would steer him away from the conservative path favored by many GOP primary voters. Rather, it was his faith in and of itself, its history, its doctrines, its sheer strangeness, that disturbed these voters.

Id.

For an illuminating exchange on whether Mormons should be considered Christians, see Bruce D. Porter & Gerald D. McDermott, *Is Mormonism Christian?*, FIRST THINGS, Oct. 2008, at 35. For Mormons like Porter, the question is rhetorical: Since Mormons believe in the resurrection and saving power of Christ, they are properly called Christians. For orthodox Christians like McDermott, the question is historical and theological: Since Mormons reject central Christian doctrines like the Trinity, believe in nonbiblical scriptures, and are not part of the historical Christian tradition, it is theologically and historically inaccurate to call them Christians. Father Neuhaus himself was sensitive to this distinction. See, e.g., Neuhaus, *Mitt Romney*, *supra* note 5 (“Mormonism is not part of historic Christianity as defined by Scripture and the early councils of the Church, but neither is it explicable apart from Christianity. A different question is whether many Mormons are Christians, and I believe the answer is yes.”).

traditional, extra-rational Christian claims as the virgin birth, the miracles of the saints, the real presence, and, indeed, the resurrection itself.¹¹⁴ Religious “reason” and “rationality” in the realm of electoral politics test more for familiarity than they do for truth.¹¹⁵ Resting on private faith and personal spiritual experience, religious truth-claims are simply not justifiable by public reasons.

Because accusations that a candidate’s religion is false are not susceptible to discussion in terms of public reasons, their deployment in politics and policymaking functions as a kind of epistemological name-calling. How can a candidate for public office respond to an accusation that his or her religion is false? Romney’s strategy was to subtly oscillate his rhetoric between the implicit suggestion that his Mormonism is acceptable (and thus politically irrelevant) as within the Judeo-Christian tradition (and thus is “true enough,” if not actually “true”),¹¹⁶ and the equally implicit concession that Mormonism is outside the Judeo-Christian tradition (and, therefore, “false”), but still acceptable (and thus again politically irrelevant) because of the American tradition of tolerating religious minorities.¹¹⁷

114. Not that people didn’t try. See, e.g., Jacob Weisberg, *Romney’s Religion: A Mormon President? No Way*, SLATE, Dec. 20, 2006, <http://www.slate.com/id/2155902/> (arguing that belief in Mormonism is more worthy of condemnation than belief in the “virgin birth” or the “parting of the Red Sea” because Mormonism is a more “transparent and recent fraud”).

For a general description of Mormon historical claims and theological doctrines, see ENCYCLOPEDIA OF MORMONISM (Daniel H. Ludlow ed., Macmillan, 1992). For a general description of Christian claims and doctrines, see ENCYCLOPEDIA OF CHRISTIANITY (John Bowden ed., Oxford University Press 2005).

115. See, e.g., Noah Feldman, *What Is It about Mormonism?*, N.Y. TIMES MAG., Jan. 6, 2008, at 34, 36, available at <http://www.nytimes.com/2008/01/06/magazine/06mormonism-t.html?pagewanted=1&r=1>.

[E]ven among those who respect Mormons personally, it is still common to hear Mormonism’s tenets dismissed as ridiculous. This attitude is logically indefensible insofar as Mormonism is being compared with other world religions. There is nothing inherently less plausible about God’s revealing himself to an upstate New York farmer in the early years of the Republic than to the pharaoh’s changeling grandson in ancient Egypt. But what is driving the tendency to discount Joseph Smith’s revelations is not that they seem less reasonable than those of Moses; it is that the book containing them is so new. When it comes to prophecy, antiquity breeds authenticity. Events in the distant past, we tend to think, occurred in sacred, mythic time. Not so revelations received during the presidencies of James Monroe or Andrew Jackson.

Id.

116. Cf. Horwitz, *supra* note 113, at 1008 (noting Romney’s contention “that he is at least religious enough to do the job of President, a statement that by implication questions whether people who stand outside the Judeo-Christian tradition would be fit for the office”).

117. Cf. Anderson, *supra* note 110, at 23 (arguing that Romney advocated a kind of “conservative multi-culturalism” by suggesting that subjecting any religion to the “public scrutiny of reason is an act of intolerance akin to racism”).

The so-called American “tradition” of religious toleration is recognizable only by comparison to the much thinner regime of toleration in Britain and its virtual absence on the Continent when the American colonies were founded. There is, moreover, a perverse irony in the appeal to this “tradition” by a Mormon whose religious forebears were successively expelled by state governments in Missouri and Illinois, and who abated relentless federal persecution in Utah only by abandoning a

So Romney's speech is replete with the suggestion that, Mormon or not, his religious beliefs are pretty much like everyone else's.¹¹⁸ He declares his faith in Jesus Christ as Savior,¹¹⁹ and his commitment to "America's common creed" (which turns out to be the Eisenhower-esque belief in a theologically unspecified "God"),¹²⁰ he attacks unbelief and secularism,¹²¹ and he finally ends by endorsing the American civil religion.¹²²

central tenet of their faith. In any event, the purported American "tradition" of tolerating religious minorities is, shall we say, not as deeply rooted in history as it is in our national myth.

118. See Mitt Romney, "Faith in America" at ¶ 29 (Dec. 6, 2007), *transcript available at Romney's Faith in America Address*, N.Y. TIMES, Dec. 6, 2007, <http://www.nytimes.com/2007/12/06/us/politics/06text-romney.html> (last visited Sept. 29, 2009).

My faith is grounded on these truths. You can witness them in Ann and my marriage and in our family. We are a long way from perfect and we have surely stumbled along the way, but our aspirations, our values, are the self-same as those from the other faiths that stand upon this common foundation. And these convictions will indeed inform my presidency.

Id.

119. See *id.* ¶ 15 ("There is one fundamental question about which I often am asked. What do I believe about Jesus Christ? I believe that Jesus Christ is the Son of God and the Savior of mankind.").

120. See *id.* ¶ 18.

It is important to recognize that while differences in theology exist between the churches in America, we share a common creed of moral convictions. And where the affairs of our nation are concerned, it's usually a sound rule to focus on the latter—on the great moral principles that urge us all on a common course.

Id.; accord *id.* ¶ 17.

I believe that every faith I have encountered draws its adherents closer to God. And in every faith I have come to know, there are features I wish were in my own. . . . As I travel across the country and see our towns and cities, I am always moved by the many houses of worship with their steeples, all pointing to heaven, reminding us of the source of life's blessings.

Id.; see also *id.* ¶¶ 36–38 (recounting how American revolutionary Samuel Adams resolved sectarian arguments about the theologically correct manner to pray for divine protection from the British, by declaring that "he would hear a prayer from anyone of piety and good character, as long as they were a patriot").

121. *Id.* ¶¶ 6 & 7.

There are some who may feel that religion is not a matter to be seriously considered in the context of the weighty threats that face us. If so, they are at odds with the nation's founders, for they, when our nation faced its greatest peril, sought the blessings of the Creator. And further, they discovered the essential connection between the survival of a free land and the protection of religious freedom. In John Adams' words: "We have no government armed with power capable of contending with human passions unbridled by morality and religion Our Constitution was made for a moral and religious people." Freedom requires religion just as religion requires freedom. . . . Freedom and religion endure together, or perish alone.

Id.; accord *id.* ¶ 19.

[I]n recent years, the notion of the separation of church and state has been taken by some well beyond its original meaning. They seek to remove from the public domain any acknowledgment of God. Religion is seen as merely a private affair with no place in public life. It is as if they are intent on establishing a new religion in America—the religion of secularism. They are wrong.

Id.; see also *id.* ¶ 32 ("I have visited many of the magnificent cathedrals in Europe. They are so inspired . . . so grand . . . so empty. Raised up over generations, long ago, so many of the cathedrals now stand as the postcard backdrop to societies just too busy or too 'enlightened' to venture inside and kneel in prayer.").

122. *Id.* ¶¶ 20–22.

We are a nation "Under God" and in God, we do indeed trust. We should acknowledge the Creator as did the Founders—in ceremony and word. He should remain on our currency, in

But all this is carefully balanced by a subtle concession embedded in the middle of the speech, acknowledging that Mormonism is, actually, different from the quintessentially “American” faiths that form the Judeo-Christian tradition:

My church’s beliefs about Christ may not all be the same as those of other faiths. Each religion has its own unique doctrines and history. These are not bases for criticism but rather a test of our tolerance. Religious tolerance would be a shallow principle indeed if it were reserved only for faiths with which we agree.¹²³

Notwithstanding his repeated suggestion that Mormonism is within the American religious mainstream, it is precisely Romney’s fear that Mormon beliefs are indeed perceived to be outside this mainstream that triggers his appeal to the tolerance of the Judeo-Christian majority. This contradiction captures the impossible situation into which candidates of minority faiths are placed by attacks on the truth of those faiths: they must either insist that they belong within a mainstream that has already rejected them, or they must beg for mainstream toleration.¹²⁴ Neither is a winning strategy.

B. The LDS Church and Proposition 8

On June 29, 2008, the President and the other members of the First Presidency of the LDS Church released a letter addressed to members of the church in California, urging them to do everything possible in the way of donating money and volunteering time in support of a proposed amendment to the California constitution that proposed to withdraw legal recognition of same-sex marriages in California.¹²⁵ This letter was read

our pledge, in the teaching of our history, and during the holiday season, nativity scenes and menorahs should be welcome in our public places. Our greatness would not long endure without judges who respect the foundation of faith upon which our Constitution rests. I will take care to separate the affairs of government from any religion, but I will not separate us from “the God who gave us liberty.” Nor would I separate us from our religious heritage.

Id.

123. *Id.* ¶ 15.

124. *Cf.* Horwitz, *supra* note 113, at 39–40.

Devout Mormon office-holders seeking to command the allegiance of broader political constituencies thus face a quandary. Their values are surely “quintessentially American,” and those values stem in part from deep reserves in their faith; and yet, to most mainline Christians, their particular religious beliefs are surely a “heterodox” form of Christianity, and public discussion of their beliefs is as likely to lead to political rejection as it is a greater shared understanding.

Id.

125. The letter asked California members to “do all you can to support the proposed constitutional amendment by donating of your means and time to assure that marriage in California is legally defined

over the pulpit in every LDS congregation in California, and was highly publicized among congregations outside of the state.¹²⁶

Although the LDS Church does not participate in partisan politics,¹²⁷ it has long taken an active part in referendum elections and ratification campaigns related to “moral issues,”¹²⁸ such as legalization of gambling or abortion,¹²⁹ government action that undermines traditional gender roles,¹³⁰ and, as the First Presidency’s letter attests, government recognition of same-sex marriage.¹³¹ Proposition 8, as the proposed amendment was known, ultimately passed with about 52% of the vote cast, and currently prohibits California from performing same-sex marriages and recognizing same-sex marriages performed in other states.¹³² The resources mobilized by the LDS Church in support of Proposition 8 are generally acknowledged to have been the decisive factor in its passage.¹³³

To those unfamiliar with LDS theology and culture, the significance and likely effect of the First Presidency’s letter probably passed unnoticed. The distinctive theology of the LDS Church,¹³⁴ its history of persecution at

as being between a man and a woman.” Letter from Thomas S. Monson, Henry B. Eyring & Dieter Uchtdorf (June 29, 2008) at ¶4 [hereinafter First Presidency Letter], *available at* <http://newsroom.lds.org/ldsnewsroom/eng/commentary/california-and-same-sex-marriage/> (last visited Dec. 30, 2009).

126. *See Mormon Church steps into the Prop. 8 battle*, <http://latimesblogs.latimes.com/lanow/2008/10/now-the-mormon.html> (Oct. 9, 2008, 11:22 PST) (reporting that the First Presidency Letter was “read repeatedly in Mormon churches”).

127. *See* The Church of Jesus Christ of Latter-day Saints, Statement of Political Neutrality, <http://newsroom.lds.org/ldsnewsroom/eng/public-issues/political-neutrality> (last visited Dec. 30, 2009) (“The Church’s mission is to preach the gospel of Jesus Christ, not to elect politicians. The Church . . . is neutral in matters of party politics.”).

128. *See id.* (reserving the church’s “right as an institution to address, in a nonpartisan way, issues that [the church] believes have significant community or moral consequences or that directly affect the interests of the Church”).

129. *See Abortion*, in 1 THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, CHURCH HANDBOOK OF INSTRUCTIONS 157 (1998) [hereinafter CHURCH HANDBOOK] (opposing abortion except in case of rape or incest, a serious threat to the life or health of the mother, or such severe defects in the fetus that it will not survive beyond birth, and encouraging Latter-day Saints “to let their voices be heard in appropriate and legal ways that will evidence their belief in the sacredness of life”); *Gambling*, in 1 *id.* at 151 (opposing all gambling, including state-sponsored lotteries, and encouraging Latter-day Saints to oppose legalization or government sponsorship of all forms of gambling).

130. *See, e.g.*, ROBERT GOTTLIEB & PETER WILEY, AMERICA’S SAINTS: THE RISE OF MORMON POWER, 200–11 (Putnam, 1984) (detailing LDS Church’s opposition to the Equal Rights Amendment).

131. *See also Same-Gender Marriages*, in 1 CHURCH HANDBOOK *supra* note 129, at 159 (opposing same-sex marriage and urging Latter-day Saints to lobby government officials to reject all efforts to legalize or otherwise to approve such marriages).

132. The California Supreme Court has ruled that Proposition 8 did not affect the legal status of same-sex marriages performed in California during the six-month period between legalization of such marriages and the passage of Proposition 8. *See Strauss v. Horton*, 207 P.3d 48, 119 (Cal. 2009).

133. *See, e.g.*, Jesse McKinley & Kirk Johnson, *Mormons Tipped Scale in Ban on Gay Marriage*, N.Y. TIMES, Nov. 15, 2008, at A1 (reporting on the “extraordinary role Mormons played in helping to pass [Proposition 8] with money, institutional support and dedicated volunteers,” and highlighting the \$5 million raised “in a matter of days” with LDS support at a crucial point in the Proposition 8 campaign); *see also Prop. 8 battle*, *supra* note 126 (reporting that Proposition 8 opponents “have credited LDS members with giving the Yes on 8 camp an edge in donations and volunteers”).

134. *See, e.g.*, FREDERICK MARK GEDICKS, “NO MAN’S LAND”: THE PLACE OF LATTER-DAY SAINTS

the hands of state and federal authorities,¹³⁵ its highly centralized organization,¹³⁶ and its continued minority status in the United States and the world have created a remarkable degree of social cohesion among active Latter-day Saints. Part of the church's historical self-understanding, moreover, includes the belief that past persecution was caused as much from internal dissension and disloyalty as from outside forces.¹³⁷ For all these reasons, active Mormons display an extraordinary degree of obedience and deference to the wishes and preferences of the leaders of the church's governing priesthood hierarchy.¹³⁸

Accordingly, it was entirely predictable that the First Presidency's urging of church members "to do all that you can" to support Proposition 8 would trigger an avalanche of financial donations and volunteer work by church members within and without California in support of the Proposition.¹³⁹ In fact, while the church itself donated less than \$300,000 of the

IN THE CULTURE WAR 8-9 (Poynter Center, 1999) (summarizing the theological differences between Latter-day Saints and conservative Christians, and arguing that these have generated animosity and lack of tolerance by the latter for the former).

135. See, e.g., *id.* at 3-7 (summarizing the state and federal persecution of 19th century Mormons and observing that the collective LDS memory of such persecutions remains "vivid and strong").

136. See, e.g., Rick Phillips, *Religious Market Share and Mormon Church Activity*, 59 SOC. RELIG. 117, 126 (1998).

The LDS Church exhibits a high degree of uniformity in doctrine, practice, and organization worldwide. This uniformity is imposed by programs assisting the transformation of the expanding church from a regional subculture to an international denomination. Within Mormonism, Sunday school curricula, the format of worship services, the content of church publications, standards of member worthiness, even the floor plans of meeting houses are painstakingly standardized across political and cultural boundaries.

Id. (citations omitted).

137. See, e.g., Gordon B. Hinckley, *Small Acts Lead to Great Consequences*, ENSIGN, May 1984, at 81 available at <http://www.lds.org> (search "small acts lead to great consequences"; follow hyperlink) (suggesting that the disloyalty of 19th century Apostle Thomas Marsh was a factor in Missouri's issuance of the 1838 "extermination order" that forcibly expelled Mormons from the state); see also Henry B. Eyring, *Safety in Counsel*, ENSIGN, June 2008, at 5, available at <http://www.lds.org> (search "safety in counsel"; follow hyperlink) (blaming deaths in the 1838 massacre at the Haun's Mill settlement in Missouri on settlement leader Jacob Haun's failure to obey an order by Joseph Smith to abandon the settlement).

138. See Richley H. Crapo, *Free Will and Obedience: The Role of Paradox in Mormon Myth and Ritual* (Jan. 4, 2008), <http://www.mormonsocialscience.org> (search "Free Will and Obedience"; follow hyperlink) (working paper) (reporting that in LDS "activities and assignments, obedience is expected to be unquestioning, since the organization, practices, and beliefs of the church are regarded as based on divine revelation," and that obedience to church authorities and loyalty to the church are the most consistently emphasized values in church publications and sermons by LDS leaders).

139. See, e.g., Peggy Fletcher Stack, *Prop 8 divides LDS Church faithful*, SALT LAKE TRIB., Oct. 23, 2008.

Many California members consider [support of Proposition 8] a directive from God and have pressured others to participate. Some leaders and members see it as a test of faith and loyalty.

....

[Some California church leaders] have even asked members to stand or raise their hands to publicly indicate their support.

Glen Lawrence, writing in the online Meridian Magazine, compared [LDS] opponents of Proposition 8 to those who sided with Lucifer against Jesus in the pre-mortal existence.

estimated \$40 million raised in support of Proposition 8, individual members of the LDS Church are thought to have supplied approximately half of this amount,¹⁴⁰ in addition to providing huge amounts of volunteer campaign labor.¹⁴¹ Accordingly, it is fair to attribute the donations of money and time by church members to the church itself, at least for the purposes of analyzing the rhetoric of the church in terms of public reason and comparing this rhetoric to that leveled at Governor Romney.

Although the pro-8 coalition with which the church and its members were allied employed consequentialist arguments against same-sex marriage, the church itself relied heavily on sectarian arguments drawn from LDS theology in support of the Proposition. The church set up its own website in support of Proposition 8, entitled, “Preserving the Divine Institution of Marriage.”¹⁴² The church’s most detailed written argument in support of Proposition 8 began with the flat theological claim that “[m]arriage is sacred, ordained of God,” and was immediately followed by a condemnation of same-sex marriage based on a detailed demonstration of its inconsistency with core elements of LDS theology.¹⁴³ For example, the church invoked against same-sex marriage the critical role played by heterosexual marriage in the LDS conception of the afterlife,¹⁴⁴ as well

Others have questioned such members’ faith and religious commitment, accusing them of undermining the prophet.

Id.

140. McKinley & Johnson, *supra* note 133, at A11; *see also Prop. 8 battle*, *supra* note 126 (reporting that Latter-day Saints had donated about 43% of the nearly \$20 million raised by pro-8 forces as of Oct. 9, 2008).

141. *See, e.g.,* McKinley & Johnson, *supra* note 133, at A11 (“Mormons made up 80 percent to 90 percent of the early volunteers who walked door-to-door in election precincts . . . [and] [m]any Mormon wards in California, not unlike Roman Catholic parishes, were assigned two ZIP codes to cover.”); Stack, *Prop 8 divides*, *supra* note 139.

LDS leaders have tapped every resource [in support of Proposition 8], including the church’s built-in phone trees, e-mail lists and members’ willingness to volunteer and donate money.

....

California LDS leaders have prompted members to sign up volunteers, raise money, pass out brochures produced by outsiders and distribute lawn signs and bumper stickers. Bishops have devoted whole Sunday school classes and the weekly Relief Society and priesthood meetings to outlining arguments against same-sex marriage. Some have pointedly asked members for hefty financial donations, based on tithing.

Id.; *Prop. 8 battle*, *supra* note 126 (reporting that in a California satellite broadcast in early October, LDS Church leaders asked 30 members from every LDS congregation in California to donate four hours a week during each of the four weeks remaining in the campaign, and that members outside of California were asked to call friends and family in California to urge support for Proposition 8).

142. PreservingMarriage.org, Preserving the Divine Institution of Marriage, *available at* <http://www.preservingmarriage.org/index.html> (last visited Dec. 30, 2009).

143. The Church of Jesus Christ of Latter-day Saints, The Divine Institution of Marriage (Aug. 13, 2008), <http://newsroom.lds.org/ldsnewsroom/eng/commentary/the-divine-institution-of-marriage>.

144. *Id.* (“[M]arriage between a man and a woman is ordained of God and . . . the family is central to the Creator’s plan for the eternal destiny of His children. . . . Marriage between man and woman is essential to His eternal plan.”) (quoting The First Presidency and Council of the Twelve Apostles of The Church of Jesus Christ of Latter-day Saints, The Family: A Proclamation to the World 1 (Sept. 23, 1995), http://www.lds.org/StaticFiles/PDF/Manuals/TheFamily_AProclamationToTheWorld_

as “essential” and “God-given” differences between the sexes.¹⁴⁵ (The latter point was also the lynchpin of the church’s opposition to the Equal Rights Amendment in the 1970s.) Only after these theological truth-claims do points about social consequences make their appearance.¹⁴⁶

As the campaign reached its climax in the weeks before the election, LDS Church leaders continually mixed public reasons for opposing same-sex marriage with theological ones, repeatedly and publicly emphasizing that the most important stakes in the repeal of same-sex marriage were theological.¹⁴⁷ The questionable and controversial nature of some of the public reasons advanced by Latter-day Saints against Proposition 8 only served to highlight the apparent priority of their theological reasons.¹⁴⁸

35538_eng .pdf); The Divine Institution of Marriage, *supra* note 143 (referring to the “sacred nature of marriage”); *id.* at 6 (referring to “distortions” of the “God-given meaning” of marriage).

145. The Divine Institution of Marriage, *supra* note 3, at 2 (“Gender is an essential characteristic of individual premortal, mortal, and eternal identity and purpose.”) (quoting The Family, *supra* note 144; *id.* (referring to “inherent differences between the genders”); *see also id.* at 6 (“When marriage is undermined by gender confusion . . . the rising generation of children and youth will find it increasingly difficult to develop their natural identity as a man or a woman.”).

146. The church also argued that allowing same-sex marriage would entail adverse consequences for child-rearing, the traditional family, social stability, separation of powers, and public education. *See id.* at 1, 2–6.

147. *E.g.*, Internet Video: Excerpts, from Proposition 8 Broadcast for California Latter-day Saints (2008), available at <http://newsroom.lds.org/ldsnewsroom/eng/news-releases-stories/church-readies-members-on-proposition-8#current> (last visited Dec. 30, 2009) (sermon by Elder Quentin R. Cook, declaring the first reason for opposing same-sex marriage as its being “contrary to God’s plan,” condemning acceptance of “wrongful behavior” and “sin” such as same-sex marriage, and urging pro-8 activism to protect the “sacred institution of marriage”); Internet Video: Discussion with Elder David A. Bednar (n.d.) <http://www.newsroom.lds.org/ldsnewsroom/eng/commentary/same-sex-marriage-and-proposition-8#Current> (last visited Dec. 30, 2009) (Explaining why he felt so strongly about supporting Proposition 8, LDS Apostle David Bednar declared that traditional heterosexual marriage is “ordained of God,” and part of “the Father’s plan, the great plan of happiness”); *see, e.g.*, Matthai Kuruvila, *Conservative Christians lead push for Prop. 8*, S.F. CHRON., Oct. 15, 2008, at A1 (“[L]et me be clear that at the heart of this issue is the central doctrine of eternal marriage and its place in our Father’s plan.”) (quoting LDS Elder M. Russell Ballard).

148. In the weeks preceding the election, the Proposition 8 supporters warned that if the proposition were to fail, public school children would be forcibly taught the morality of same-sex marriage, churches would lose their tax exempt status if they refused to solemnize same-sex marriages in their chapels and sanctuaries, religious adoption agencies would lose the power to prefer heterosexual adoptive parents, religious universities would be required to provide married student housing for same-sex spouses, and sermons about the wrongfulness of same-sex marriage would be criminalized as hate speech. *E.g.*, BECKET FUND FOR RELIGIOUS LIBERTY, SAME-SEX MARRIAGE AND STATE ANTI-DISCRIMINATION LAWS (Oct. 2008) available at <http://becketfund.org/files/34a97.pdf> (last visited Dec. 30, 2009); Rod Dreher, *This war is not won: Conservatives may lose some religious liberty when gay marriage becomes constitutionalized*, says Rod Dreher, THE DALLAS MORNING NEWS, Nov. 16, 2008, at 5P; Guy Murray, *Six Consequences the Coalition Has Identified If Proposition 8 Fails* (Sept. 14, 2008), <http://protectingmarriage.wordpress.com/2008/09/14/six-consequences-the-coalition-has-identified-if-proposition-8-fails/>; Blake Ostler, *Prop 8 comment (that is now a Prop 8 post)* (Oct. 20, 2008), <http://www.newcoolthang.com/index.php/2008/10/prop-8-comment-they-would-not-print/569/>; *see, e.g.*, Michael Gardner, *Prop. 8 Backers Fear Instruction in Gay Marriage*, SAN DIEGO UNION-TRIBUNE, Oct. 24, 2008, at A1.

These claims circulated widely within the LDS community, and some were adopted by the church and its leaders in opposing Proposition 8. *See, e.g.*, The Divine Institution of Marriage, *supra* note 143 (making public education, tax exemption, and hate speech arguments). The claims were disputed by many legal experts. *E.g.*, Frank D Russo, *Constitutional Law Professors Reject Arguments*

So perhaps one can have sympathy for Governor Romney only to a certain point. Those who intervene in the political marketplace on the basis of religious truth cannot complain when they are attacked on the same basis.¹⁴⁹ Accordingly, an important qualification to the conclusion that attacks on the truth-claims of candidate religions are out of place in contemporary politics, if not altogether meaningless, must be that such religions must not themselves be intervening in politics on the basis of their truth-claims. Neither a candidate nor his or her religion can complain about attacks on the religion's truth-claims when that religion uses those truth-claims to justify its own intervention in electoral debates.

As liberal theorists have emphasized, this is an ethical and not a legal matter.¹⁵⁰ Speech Clause doctrine makes it clear that religious individuals and institutions are free to express their views on political and policy issues however they please, subject only to limitations on partisan expression imposed as a condition to tax exempt status,¹⁵¹ applicable fundraising and reporting requirements,¹⁵² and other well-established limitations on the freedom of speech.¹⁵³ These modest doctrinal constraints do not materially inhibit robust public criticism of the religious truth-claims of candidate religions. Certainly there is no plausible theory of the freedom of speech that would generally permit either the punishment or silencing of public attacks on the truth-claims of candidates or their religions, or the use of those truth-claims to bolster one's position in a political or policy contest.

Made by California Proposition 8 Proponents (Oct. 28, 2008), <http://www.californiaprogressreport.com/site/?q=node/1370>; Sheila Suess Kennedy, *Gay Marriage Falls in Defeat; People Rise Up to Protest*, INDIANAPOLIS STAR, Nov. 24, 2008, at 9; Morris A. Thurston, A Commentary on the Document 'Six Consequences . . . if Proposition 8 Fails' (n.d.), http://www.hrc.org/documents/Responses_to_six_Consequences_if_Prop_8_fails.pdf (last visited Dec. 30, 2009); see, e.g., Michael Gardner, *Law Professors Enter Prop 8. Fray on Church's Tax-Exempt Status*, SAN DIEGO UNION-TRIBUNE, Oct. 30, 2008, at A3; Mike Swift, *Questions Raised Over Yes on Prop. 8 Ads*, SAN JOSE MERCURY NEWS, Oct. 18, 2008.

149. Several commentators suggested that, since the entry of the LDS Church into the Proposition 8 campaign came well after the demise of Romney's candidacy, it could not supply a justification for attacks on Romney's Mormonism. This misapprehends my argument. I am not arguing a cause and effect relation between criticism of Romney's Mormonism and the LDS Church's involvement in Proposition 8; rather, I am arguing that candidates for office, like Romney, who belong to a religion that regularly intervenes in politics on the basis of religious truth and falsity, like the LDS Church, have no ethical ground for complaint when that religion is attacked on the same basis.

150. See *supra* notes 97–108 and accompanying text.

151. 26 U.S.C. §§ 501(a), (c)(3) (2006) (conditioning tax exempt status on noninvolvement in political campaigns for or against a candidate for public office).

152. See, e.g., *McConnell v. FEC*, 540 U.S. 93, 180–202 (2003) (upholding against facial challenge constitutionality of statutory reporting and disclosure requirements for certain expenses related to federal elections).

153. See, e.g., *N.Y. Times v. Sullivan*, 376 U.S. 254 (1964) (defamatory expression spoken with knowledge of or reckless disregard for its falsity not protected by Speech Clause); *Miller v. California*, 413 U.S. 15 (1973) (same with respect to obscene expression); *Virginia v. Black*, 538 U.S. 343 (2003) (same with respect to expression that genuinely threatens or is likely to provoke immediate violence).

The point, rather, is that “free” speech isn’t really free, as Stanley Fish once observed.¹⁵⁴ Once a religion becomes known for intervention in electoral politics on the basis of claims of religious truth—claims that may not be shared by many or most other Americans, or that may be controversial even when they have majority support—it cannot complain when it and its members are attacked on the ground that such truth-claims are false. That is the unavoidable cost of competing in a pluralistic, postmodern marketplace for religious truth with claims about an exclusive truth whose validity cannot be demonstrated to those who do not already accept it.

CONCLUSION: PLURALISM OVER TRUTH

It seems unlikely that truth-claims in political elections will contribute much to a dialogue that is already considerably debased. Without a means of proving such claims to those who do not already agree, attacks on candidate religions cannot function as actual arguments. Instead, they constitute implicit (and sometimes explicit) markers of popular acceptance or rejection, like “real America” or “un-American.” Romney spent little time in his speech trying to prove the unprovable, that he is, “in fact” and “really,” a “true” Christian. His speech sought to show, simultaneously and ironically, that his faith was quintessentially American and that its un-Americanness shouldn’t matter.

As markers of acceptance, truth-claims are especially perilous political weapons for religious minorities, since they can always be turned against them by religious majorities who have presumptive electoral power. Religious minorities attacked on the basis of truth and falsity are left with only the two choices Governor Romney had, and neither is likely to be a winning electoral argument. Instead, it is precisely in religious pluralism that minorities should place their trust.

Majority religious groups reflexively turn to truth claims in response to threats from religious pluralism. For majoritarian religions, pluralism upsets their presumptions to cultural and political power that often rest on little more than unreflective conventional wisdom. For religious minorities, however, pluralism is the guarantee of space for religious liberty, because a pluralist society that is genuinely liberal as well as democratic is less likely to turn on the politically powerless in the name of truth.¹⁵⁵ A politically just democracy, as Rawls pointed out, requires that we “give up forever the hope of changing the constitution so as to establish our reli-

154. STANLEY FISH, *THERE’S NO SUCH THING AS FREE SPEECH (AND IT’S A GOOD THING, TOO)* (Oxford 1994).

155. This was, of course, the heart of Madison’s argument about tyrannical majorities and entrenched factions. *See THE FEDERALIST NOS. 10, 51* (James Madison).

gion's hegemony, or of qualifying our obligations so as to ensure its influence and success."¹⁵⁶

Asked by a friend if he believes in God, Italian philosopher Gianni Vattimo replied that he "believes that he believes," that he "hopes to believe." This recalls Herberg's prescient description of Judeo-Christianity, and the ironic postmodern focus of contemporary American spirituality on immanence rather than transcendence. This sort of modest, even humble, search for personal truth enriches the individual without doing violence to her neighbors. I would suggest that it is the attitude that believers, even believers in strong thought, but especially minority believers, should aim for in electoral politics. That postmodernism and pluralism might be pushing American believers to adopt this kind of posture is cause for hope.

156. Rawls, *Public Reason Revisited*, *supra* note 98, at 782.